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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Report of the Select Committee on the Prevention of Corruption (Amendment) Bill, 2013 was presented to the Rajya Sabha on the 12th August, 2016:—

COMPOSITION OF THE COMMITTEE

(As Constituted on 11th December, 2015)

1. *Shri Bhupender Yadav — *Chairman*
2. Shri Shantaram Naik
3. Shri Bhubaneswar Kalita
4. Shri Naresh Agrawal
5. Shri Sukhendu Sekhar Roy
6. Shri Anubhav Mohanty
7. Shri Devender Goud T.
8. Mir Mohammad Fayaz
9. Shri A. Navaneethakrishnan
10. Shri Praful Patel
11. Shri D. Raja
12. Shri Hishey Lachungpa
13. Shri Rajeev Chandrasekhar

* Appointed as Chairman w.e.f. 12th July, 2016 consequent upon the retirement of Shri Anil Madhav Dave from Rajya Sabha.

14. #Shri Tiruchi Siva
15. Shri Naresh Gujral
16. Shri Satish Chandra Misra
17. Shri Sanjay Raut
18. @Shri C.P. Narayanan
19. **Shri Dilipbhai Pandya
20. ##Shri Shamsher Singh Manhas
21. \$Shri Pramod Tiwari
22. \$\$Shri Harivansh
23. ^^ Shri Swapan Dasgupta

SECRETARIAT

1. Dr. D. B. Singh, Secretary
2. Shri K. P. Singh, Joint Secretary
3. Shri Ashok K. Sahoo, Joint Director
4. Smt. Niangkhanem Guite, Assistant Director

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
(DEPARTMENT OF PERSONNEL & TRAINING)

1. Shri Bhanu Pratap Sharma, Secretary
2. Shri Jishnu Barua, Joint Secretary
3. Shri Rakesh Kumar, Director.

MINISTRY OF LAW AND JUSTICE

(I) LEGISLATIVE DEPARTMENT

1. Dr. G. Narayana Raju, Secretary
2. Dr. (Ms.) Reeta Vasishta, Additional Secretary
3. Shri R.L. Sreenivas, Additional Legislative Counsel.

(II) DEPARTMENT OF LEGAL AFFAIRS

1. Shri S.R. Mishra, Joint Secretary & LA
2. Shri Ramayan Yadav, Joint Secretary & LA
3. Shri R.S. Verma, Deputy Legal Advisor
4. Dr. R.J.R. Kasibhatla, Deputy Legal Advisor.

Appointed in lieu of Smt. Kanmozhi on 22nd December, 2015.

@ Appointed as Member with effect from 27th April, 2016 consequent upon retirement of Shri K.N. Balagopal on 21st March, 2016 from Rajya Sabha.

** Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Shri Anil Madhav Dave on 29th June, 2016 from Rajya Sabha.

Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Dr. Chandan Mitra on 29th June, 2016 from Rajya Sabha.

\$ Appointed as Member with effect from 19th July, 2016 consequent upon retirement of Shri Avinash Pande from Rajya Sabha on 4th July, 2016 who was appointed upon retirement of Shri Mani Shankar Ayyar on 21st March, 2016 from Rajya Sabha.

\$\$ Appointed as Member with effect from 19th July, 2016 consequent upon retirement from Rajya Sabha of Shri K.C. Tyagi on 7th July, 2016 from Rajya Sabha.

^^ Appointed as Member with effect from 19th July, 2016 consequent upon appointment of Shri Ramdas Athawale to the Union Council of Ministers with effect from 5th of July, 2016.

INTRODUCTION

As the Chairman of the Select Committee of Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013 and having been authorized by the Committee to submit the Report on its behalf, I present this Report on the Bill.

2. The Prevention of Corruption (Amendment) Bill, 2013 was introduced in the Rajya Sabha on the 19th August, 2013. The Bill was referred to the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice which presented its Sixty-ninth Report on the Bill to the Parliament on 6th February, 2014. The Ministry had also sought the views of the Law Commission on the amendments and the Law Commission made several recommendations in its Two Hundred and Fifty Fourth Report in 2015. In the light of the recommendations made in those Reports, the Government proposed as many as thirty-one official amendments to the Bill in 2015, which were substantive in nature and had far reaching impact on the Bill. The Select Committee of Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013 was constituted on 11th December, 2015 to examine the Bill and the amendments proposed by the Government and the Members and report to the Rajya Sabha by the last day of the first week of the Two Hundred and Thirty Eighth Session of the House.

3. The Committee held fifteen sittings in all.

4. The Committee, in its first sitting held on 21st December, 2015, had a general discussion on the issues involved in the Bill and deliberated upon the course of action and the procedure for examination of the Bill. As is the practice, the Committee decided to have wider consultations with stakeholders and to invite views and suggestions from interested individuals / organizations / stakeholders/experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers. The Committee also decided to hear the views of the State Governments, Chamber of Commerce and Industries, Public Sector Undertakings, Public Sector Banks, Employees Associations of State Government, Legal luminaries and Members of Civil Society by undertaking study-visits to Bengaluru, Mumbai and Kolkata. Accordingly, a press communiqué was issued to solicit the views of the public at large. In response to the Press Release issued seeking suggestions/ views on the Bill, 128 memoranda were received and out of these, 12 were treated as substantive. Comments of the Department of Personnel and Training on the main suggestions/comments contained therein were sought for the consideration of the Committee.

5. In its second sitting held on the 12th January, 2016, the Committee heard the views of Central Vigilance Commission (CVC); Central Bureau of Investigation (CBI) and Central Board of Excise and Customs (CBEC) on the provisions of the Bill.

6. In its third sitting held on the 13th January, 2016, the Committee heard the Department of Personnel and Training(DoPT), Central Board of Direct Taxes (CBDT), Enforcement Directorate (ED) and Comptroller and Auditor General of India (C&AG) on the Bill and sought clarifications on the complex legal issues.

7. The Committee also undertook study-visits to Bengaluru, Mumbai and Kolkata in the month of February, 2016. During the study-visits, the Committee held interactions with State Governments of Karnataka; Tamil Nadu; Maharashtra; West Bengal; Bihar; Odisha; and Gujarat; UT Administrations of Daman and Diu and Dadra and Nagar Haveli; Andaman and Nicobar Islands; Bar Council of Karnataka; Federation of Karnataka Chamber of Commerce & Industries; Indian Bank's Association(IBA); Bombay Chamber of Commerce and Industry; Institute of Cost Accountants of India; Bengal Chamber of Commerce and Industry; Bharat

Chamber of Commerce; Namma Bengaluru Foundation, Bengaluru; Lok Satta, Hyderabad; Janagraha, Bengaluru; Avantika Foundation, Bengaluru; Centre for Budget and Policy Studies, Bengaluru; Civic Bangalore, Bengaluru; Coalition Against Corruption; Karnataka State Government Employees' Association; Association of Women Entrepreneurs of Karnataka; Karnataka Small Scale Industries Association; All India Bank Employees' Association; All India Bank Officers Confederation and various Public Sector Undertakings/ Banks. The Committee also interacted with Justice Santosh Hegde, (Retd.) Judge of Supreme Court & Former Lokayukta, Karnataka; and Shri V. Balasubramanian, Former Additional Chief Secretary, Government of Karnataka & Chairman, Transparency International, India – Karnataka during its study-visit to Bengaluru. Justice B. Subhashan Reddy, Lokayukta for Andhra Pradesh & Telangana (Former Chief Justice of Tamil Nadu and Kerala and Former Chairperson, A.P. State Human Rights Commission) has concurred with the amendments to the Prevention of Corruption Act, 1988 brought by the Prevention of Corruption (Amendment) Bill, 2013 and official amendments thereto for effective eradication of corrupt activities in the society while protecting the harassment of the honest among the public servants. A list of Stakeholders who submitted their views to the Committee is at Annexure II.

8. As the Committee required more time for wider consultations, it was not possible for it to present its Report to the House within the period stipulated in the Motion for appointment of the Committee. In its fourth sitting held on the 23rd February, 2016, the Committee decided to seek extension of time to present the Report on the Bill from the House upto 29th April, 2016. The House granted, on a motion moved to that effect on 25th February, 2016, an extension of time upto 29th April, 2016 for presentation of the Report.

9. In its fifth sitting held on the 9th March, 2016, the Committee heard the views of the State Governments of National Capital Territory of Delhi, Haryana, Himachal Pradesh, Uttarakhand, Chhattisgarh and Madhya Pradesh.

10. In its sixth sitting held on the 10th March, 2016, the Committee heard the views of State Governments of Mizoram, Sikkim, Manipur, Assam, Tripura and Nagaland.

11. In its seventh sitting held on the 1st April, 2016, the Committee heard the views of Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce & Industry (FICCI), PHD Chamber of Commerce and Industry, PRS Legislative Research, Institute of Company Secretaries of India (ICSI), Institute of Chartered Accountants of India (ICAI), National Campaign for People's Right to Information (NCPRI), Indian Civil and Administrative Service (Central) Association, Confederation of Central Government Gazetted Officers' Organisations and Confederation of Civil Service Associations.

12. In its eighth and ninth sittings held on the 12th and 13th April, 2016, the Committee held thread bare discussion on the Clauses of the Bill on the basis of response on the feedbacks received from various stakeholders.

13. As the Committee decided to hold a few more meetings to finalise its views and adopt the Report, it decided to seek further time upto the last day of the first week of the monsoon session. The House granted, on a motion moved to that effect on 29th April, 2016, an extension of time upto day of the first week of the Monsoon Session for presentation of the Report.

14. In its tenth sitting held on the 26th April, 2016, the Committee held internal deliberations on the Bill to be reported by the Select Committee.

15. In its eleventh meeting held on the 7th June, 2016, the Committee held discussions with unofficial witnesses.

16. In its twelfth meeting held on 21st July, 2016, the Committee heard the views of Dr. Subramanian Swamy, MP (Rajya Sabha) on the provisions of the Bill. The Committee also decided to seek further time upto the last day of the first week of the Winter Session. The House granted, on a motion moved to that effect on 22nd July, 2016, an extension of time upto day of the first week of the Winter Session for presentation of the Report.

17. In its thirteenth meeting held on 2nd August, 2016, the Committee held discussions with Department of Personnel and Training, Legislative Department and Department of Legal Affairs on the provisions of the Bill.

18. In its fourteenth meeting held on the 8th August, 2016, the Committee held clause-by-clause consideration of the Bill.

19. The Committee considered and adopted its draft Report on the Bill and modified Bill to be reported by the Committee at its sitting held on the 11th August, 2016.

20. The Committee also received suggestions/ amendments from some of its Members in the course of consideration of the Bill. The suggestions/amendments so received are placed at Annexure-I.

21. While considering the Subject, the Committee took note of the following documents/ information placed before it:—

- (i) Background note on the Subject submitted by the Department of Personnel Training (DoPT);
- (ii) United Nations Convention Against Corruption (UNCAC);
- (iii) Bribery Act, 2010 of the United Kingdom;
- (iv) Two Hundred and Fifty Fourth Report of the Law Commission of India on Prevention of Corruption (Amendment) Bill, 2013 (2015);
- (v) Sixty-ninth Report of the Department Related Standing Committee on the Personnel, Public Grievances, Law and Justice presented to the Parliament on 6th February, 2014;
- (vi) Written views of Central Vigilance Commission (CVC) on the Bill;
- (vii) Written views of Central Bureau of Investigation (CBI) on the Bill;
- (viii) Written views of Central Board of Direct Taxes (CBDT) on the Bill;
- (ix) Written views of Central Board of Customs and Excise (CBEC) on the Bill;
- (x) Written views of Comptroller and Auditor General of India (C&AG) on the Bill;
- (xi) Written amendments proposed by the Government to the Bill in 2015 and 2016;
- (xii) Submissions of various State Governments and Union Territory Administrations and Comments of DoPT thereon;
- (xiii) Submissions of Public Sector Undertakings/ Public Sector Banks and Comments of DoPT thereon;
- (xiv) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts and Comments of DoPT thereon;
- (xv) Replies of Department of Personnel & Training (DoPT) to the queries raised by the Members during the meetings of the Committee; and
- (xvi) Comments of DoPT on the replies of stakeholders to the questionnaire of the Secretariat on the provisions of the Bill.

22. The Committee wishes to place on record its gratitude to the representatives of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training), Central Vigilance Commission, Central Bureau of Investigation, Central Board of Direct Taxes, Central Board of Excise and Customs, Comptroller and Auditor General of India, Enforcement Directorate and Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary inputs and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the State Governments, Public Sector Enterprises, Public Sector Banks, Civil Societies and the

distinguished persons who appeared before the Committee and placed their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

NEW DELHI;
11th August, 2016

BHUPENDER YADAV
Chairman,
Select Committee of Rajya Sabha on
the Prevention of Corruption (Amendment) Bill, 2013.

REPORT

The Prevention of Corruption (Amendment) Bill, 2013 seeks to amend the Prevention of Corruption Act, 1988(hereafter referred to as Principal Act) to bring the domestic anti-corruption legal framework in conformity with current international practices laid down by the United Nations Convention Against Corruption (UNCAC) which has since been ratified by our country. Furthermore, certain amendments have been necessitated in view of several judicial pronouncements on the Prevention of Corruption Act, 1988.

2. Salient Features of the Bill

- Definition of “undue advantage” – Section 2(d) inserted through official amendments.
- Laying down time line for speedy trials of corruption cases – Section 4(5) inserted through official amendments.
- Restructuring all provisions of acceptance of bribe by a public servant under single Section – Section 7 substituted by official amendments.
- Criminalization of the act of giving of bribe – Section 8 substituted by official amendments.
- Criminal liability for commercial organisations for bribing public servant. – Section 9 [Rule making power provided under new Section 32] substituted by official amendments.
- Liability of senior management of commercial entity in case of consent or connivance – Section 10 substituted by official amendments.
- Intentional enriching and possession of disproportionate assets proof of such illicit enrichment. – Section 13 amended by the Bill.
- Sanction for initiating investigation against a public servant to be granted by Lokpal or Lokayukta –Section 17A inserted by official amendments.
- Attachment and forfeiture of property – Insertion of new Section 18A by the Bill and subsequent official amendments.
- Extending protection of prior sanction of the Competent Authority of appropriate Government to retired government servant and providing for timeline for granting sanction by that Competent Authority – *Section 19 to be amended by the Bill.*

3. As many as 19 Sections of Prevention of Corruption Act, 1988 are proposed to be amended though the Bill as well as official amendments proposed thereto. Besides that, amendment the Prevention of Money Laundering Act, 2002 has also been proposed. Substitution of Sections 7, 8, 9, 10, 12, 13, 14, 19 and 20 ; Omission of Section 11 and 24; insertion in Sections 2, 4 and 32 and new Sections *i.e.*, 17A and 18A and; consequential amendment to Sections 1, 15, 16 and 23 of the Prevention of Corruption Act, 1988 have been proposed.

Clause 2

(Insertion of Definition of 'Undue Advantage' under
Sub-Section 2(d) of the Principal Act)

4.0 Clause 2 of the Government Bill sought the omission of sub-section (6) of Section 5 of the Principal Act. However, the official amendments now seeks to insert definition of 'undue advantage' under sub-clause (d) in the Section 2 of the Principal Act which has been

treated as Clause 2 of the Bill being reported by the Committee. The Clause defines the terms 'undue advantage' as any gratification other than legal remuneration. The terms 'gratification' and 'legal remuneration' as defined under Explanation (b) and (c) to Section 7 of the Principal Act has now been given as explanation for the purpose of proposed Section 2. The Department of Personnel and Training (DoPT) has stated that the definition and meaning of the terms 'undue advantage' are well understood in the international jurisprudence and are taken from United Nations Convention Against Corruption (UNCAC).

4.1 Some stakeholders were of the view that there is need to provide an explanation to the terms 'non-pecuniary benefit' as there is every possibility of filing malicious and false complaint against the public servant. Further, it was also suggested that casual exchange of hospitality like presenting traditional gift/souvenir/memento subject to a certain monetary limit and courtesy lunch/dinner during meeting/official visit may not be brought under the purview of 'undue advantage'.

4.2 Members of the Committee also felt that the purport of the words 'undue advantage' used in the proposed amendments includes all forms of pecuniary and non-pecuniary gratifications and appears to be wide enough to be misused by the enforcement agencies.

Observation/ Recommendation of the Committee

4.3 The Committee, notes that the expression 'undue advantage' imported from UNCAC is not widely used in any statute. Committee also notes that the expression as used in Section 300 of IPC 1860 implies 'unfair advantage'. Even judicial interpretation of those terms is few and far between. The Committee, apprehends that the enforcement/probe agencies may misuse the said expression to harass public servant as well as members of civil society in corruption cases and advises that adequate precautions be taken in this regard. The Committee, however, notes that the Law Commission of India in its Two Hundred Fifty-fourth Report (February, 2015) has suggested to use the expressions 'undue advantage' in the PC Act. The Committee endorses the aforesaid amendments proposed to Section 2 of the PC Act, 1988 under the Clause.

4.4 Accordingly, the Committee recommends that the following Clause may be inserted after Section 2(c) of the Principal Act:

“In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in Section 2, after clause (c), the following clause shall be inserted, namely:—

‘ (d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation. For the purposes of this clause,

(a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.”

Clause 3

(Insertion of new Sub-Section to Section 4 of PC Act, 1988 for
Time Bound Trial of Corruption Cases)

5.0 Clause 3 of the Government Bill seeks to restructure Sections 7, 8, 9 and 10 of the Principal Act. However, an official amendment has been proposed to insert sub-Section (5) after sub-section (4) of Section 4 of the Principal Act casting obligation upon the Special Judge to ensure completion of trial of corruption cases within a period of two years from the date of filing of the case which could be extendable to four years by the Special Judge by six months at a time. The reason for extension of time should be recorded in writing by the

Special Judge. In view thereof, official amendments to Section 4 of the Principal Act is treated as Clause 3 in the Bill reported by the Committee.

5.1 From the data submitted to the Committee by State Governments, it was found that several corruption related cases were pending for ten to twenty years in many States. A majority of stakeholders were of the view that two years time limit proposed may be adhered to with extension of half of that period in exceptional cases. Like the time line for trial of cases for the judiciary, a time limit for investigation and time limit for giving sanction may also be provided in the Act for ensuring better conviction.

5.2 Some other stakeholders also submitted that fixing time limit of two years extendable at six monthly intervals to four years for trial will not happen without streamlining the court procedures. The Supreme Court and High Court may be impressed upon to lay down operative rules to prevent adjournments and hold trial on day-to-day basis as already mentioned under Sub-section 4 of Section 4 of the Prevention of Corruption Act, 1988.

5.3 To the query of the Committee whether laying of time line for criminal proceedings is in consonance with the ratio the case laid down in *Shri P. Ramachandra Rao Vs. State of Karnataka* (2002) 4 SCC 578, the Department of Legal Affairs cited the Speedy Trial Act, 1988 of Philippines, where entire trial period should not exceed 180 days from the first day of trial. The Department also submitted that the matter had also been referred to a seven judge constitutional Bench to review the decision. The Committee has alternatively suggested to use the expression 'as far as possible' in lieu of definite timeline proposed through the official amendment.

Observation / Recommendation of the Committee

5.4 The Committee endorses the aforesaid amendment to Section 4 of the Act prescribing the time line for trial of corruption cases. However, the Committee hopes that the Special Judges will make all efforts to complete the trial within the prescribed two years without seeking extension of time. It also impresses upon the investigation agencies to ensure that investigation and filing of chargesheets of offences committed under the Principal Act are also completed within a reasonable time-frame so that public servants are not harassed by prolonging the investigation of cases.

5.5 The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“In Section 4 of the Principal Act, after sub-Section (4), the following sub-Section shall be inserted, namely:—

“(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the case:

Provided that in case, the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years.”

Clause 4

(Substitution of Sections 7, 8, 9 and 10 of the PC Act)

6.0 With the new official amendments to Section 4, amendments proposed to Sections 7, 8, 9 and 10 of the Principal Act by the Government Bill, 2013 has been renumbered as Clause 4 of the Bill reported by the Committee. The said Clause inter alia proposes to make bribe giving as an offence explicitly in line with provisions of UNCAC. The said clause also prescribes similar punishment to both bribe giver and bribe taker being equal partners of the offence of corruption.

6.1 The statement by the bribe giver, after paying the bribe to the public servant, would not now be a defence for the bribe giver. The DoPT through official amendment has proposed insertion of sub-Section 2 to Section 8 to protect the bribe giver who informs the police/probe agencies prior to making payment of bribe and help to catch the bribe receiver red-handed. Now, as a consequence, the protection to bribe giver provided under Section 24 of the Principal Act is proposed to be omitted.

6.2 Apprehension was expressed by several stakeholders that taking bribe through middle men, which was covered in Principal Act, appears to be left out in the amendment. They felt that relevant provisions may be included to cover conduits or third parties in the chain of bribery to check corruption. Certain stakeholders including some Members of the Committee felt that act of omission or willful omission need to be included as offence under proposed Section 7 under Clause 4 of the Bill.

6.3 Punishment for petty as well as grand or hyper corruption is proposed to be same in the Bill. Some stakeholders suggested that it should be rationalised and linked to the enormity of bribe paid or received. It was suggested that graded punishment in lieu of uniform punishment for bribe givers and bribe takers should be introduced.

6.4 Several members of civil society stated that coercive bribe givers are the victim of the crime of bribery. They felt that coercive bribe givers should not be treated on equal footing with collusive bribe givers as far as punishment to bribe givers is concerned. The bribe giver may be held criminally liable with fine while the bribe taker as well as the abettor/broker may be held criminally liable with rigorous imprisonment.

6.5 Some stakeholders felt that the legal validity of the terms – ‘agrees to receive or obtain’ in the proposed Section 7 of the Prevention of Corruption Act, 1988 is yet to be tested as mere intention does not constitute crime unless such intention is acted upon.

6.6 Some Members of the Committee suggested that if a bribe giver, within thirty days of giving/paying undue advantage/bribe to public servant, voluntarily turns as an approver by reporting the matter to police/probe agencies and assist them, he may be given immunity from criminal prosecution. The bribe giver has to return matching amount of benefit secured by him/her by making payment to the State.

6.7 Some stakeholders appealed to the Committee to retain Section 24 of the Principal Act to protect coercive bribe giver.

6.8 The Department of Personnel and Training felt that both bribe giver and bribe receiver are equal partners in the offence of bribery whether the bribe giver is a willing partner or is forced to commit such crime involuntarily would be clear after analysis of facts in retrospect after taking into account all relevant factors. The law per se cannot define parameters to decide such segregation. The analysis of evidence lies within the domain of judiciary. The court can decide quantum of punishment and fine to be imposed after analysing facts and circumstances of each case. Further, it stated that the terms ‘active bribery’ and ‘passive bribery’ are not used in the Bill but are used in UNCAC. Further, the Department stated that the terms ‘coercive bribery’ and ‘collusive bribery’ are also in vogue in international arena and there exists thin line between these two types of bribery. There is every likelihood that most of the bribe givers though acting in collusion may claim that bribe was paid under compulsion to evade and escape punishment. In view of the Government’s policy of zero tolerance to corruption, no distinction in bribe giving except giving protection to bribe giver who informs police/probe agencies prior to payment of bribe to public servant is justified.

6.9 Some Members of the Committee felt that the expression ‘expecting to be a public servant’ is vague and no one can be a public servant before his selection or election and may be used to target individuals who are yet to enter the public office.

Observations/ Recommendations of the Committee

6.10 The Committee feels that the words ‘expecting to be a public servant’ may be deleted in the proposed Section 7 and in all relevant Sections of the PC Act, 1988. The

Committee further recommends that the words 'agrees to receive' may be deleted from Section 7 and all relevant Sections in the Act.

6.11 The proposed Section 8 criminalizes the act of bribe-giving as an independent offence and provides that any one who offers, promises or gives 'undue advantage' to any person to induce the public servant to perform public duty improperly would constitute cognizable offence. The Committee feels that mere offering of bribe may not be appropriate to be an offence unless it is accepted or demanded. The Committee, therefore, suggests that the words 'offer' may be deleted from proposed Section 8.

6.12 The Committee notes that bribe giver has been given protection in the proposed sub-Section (2) of Section 8 where the bribe giver informs the law enforcement authority or investigation agency before giving the bribe but the Committee does not find any protection to coercive bribe giver in the Bill. The issue was much debated and deliberated by the Committee that some protection in such cases may also be provided. The Committee takes note of the suggestions in para 6.6 supra and recommends that if the bribe giver within seven days of giving or paying bribe to public servant report the matter to police or law enforcing agency, he may be given immunity from criminal prosecution.

6.13 The Committee endorses other provisions of the proposed official amendments to Sections 7 and 8 of the Principal Act and suggests incorporation of the same in the Bill.

6.14 The Committee feels that minimum term of sentence for bribe giver proposed under Section 8 may not be specified and leave it to the discretion of the Court to decide the quantum of minimum punishment on the basis of gravity of offence in terms of imprisonment or fine or both.

6.15 The Committee, accordingly, recommends that the Clauses 7 and 8 be incorporated as per the following formulation:

“7. Any public servant who,—

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, intending that in consequence a public duty would be performed improperly or dishonestly either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage as a reward for the improper or dishonest performance (whether by himself or by another public servant) of a public duty; or

(c) performs, or induces another public servant to perform, improperly or dishonestly a public duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

(i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain (or is to accept or attempt to obtain) the advantage directly or through a third party.”

“8. (1) Any person who gives or promises to give an undue advantage to another person, and intends such undue advantage—

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty,

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.

Illustration.— A person, ‘P’ gives a public servant, ‘S’ an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. ‘P’ is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.”

Corporate Liability of Commercial Organisations

7.0 In order to contain corporate corruption, liability of commercial organization has been increased to the extent of making its in-charge guilty of offence of corruption, if its agent or employee offers undue advantage/bribe to public servant with consent/connivance of the former to obtain or retain advantage in business for that commercial organization and would be punished with three to seven years of imprisonment and with fine if the consent/connivance of Board/ Management of commercial organization is proved in the court of law. However, if that commercial organization has put in place internal preventive mechanism to curb corrupt practices that would be a defense for the management of commercial organization. The Union Government would also evolve a uniform set of guidelines under Rules for prevention of corruption by the agent or employees of commercial organization in consultation with stakeholders.

7.1 Some stakeholders and the Members of the Committee stated that there are certain entities which are neither charitable organizations nor carrying out any business like, *i.e.*, Clubs, Software Technology Parks, Chamber of Commerce and Industry, Professional Bodies (*e.g.* Bar Council of India, ICAI & IICS). It was, therefore, suggested that the word ‘entities’ may be used in lieu of ‘commercial organisation’.

7.2 Some Members of the Committee stated that the charitable organizations should not be included under the definition of ‘commercial organisations’. It was felt that inclusion

of charitable organizations in the definition Clause will lead to unnecessary harassment of these organizations.

7.3. Some stakeholders were of the view that deeming 'in-charge of commercial organization' guilty for the acts of his employees without consent or connivance of that incharge would go against canons of criminal jurisprudence according to which, everyone is presumed to be innocent until proven guilty. They felt that the vicarious liability of the Board/Management of a commercial organization for its employee or agent for his negligence should not be the cause of prosecution against the members of Board/Management. Rather it should be considered as a case of wilful negligence.

7.4. However, some stakeholders pointed out that the Foreign Corrupt Practices Act, 1997 of USA and the UK Bribery Act, 2010 have put additional obligations upon Multi National Corporations (MNCs) of those countries operating in India. However, some cases of MNCs paying bribes to public servants have been reported in the media. This, they stated, shows that the code of ethics developed for internal functioning has very little adherence. Thus, the companies both private and public, besides adoption of internal code of conduct need to be legally and vicariously liable for the bribes paid by their agents or fixers to public servant and companies need to become intolerant to corruption and strengthen standard of their corporate governance and integrity. They felt that commercial organizations should be held legally accountable and vicariously liable for corrupt activities by its employees in addition to having internal preventive mechanism to thwart corrupt activities.

7.5. Some Members of the Committee proposed for the reduction of maximum punishment of the commercial organization from seven to five years, while some Members suggested a revised proviso to the Clause of the Bill to mention explicitly that the person who is involved in corruption would be punishable with imprisonment while the in-charge of the commercial organization would be punishable with fine.

7.6. Some Members expressed apprehensions that since bribe giving has been a cognizable offence, Board/Management of a commercial organization may be hauled up by the police for the misdemeanor of his employees even before the connivance/consent of the Board/Management is proved beyond reasonable doubt causing harassment to the commercial organization. It may hamper ease of doing business in the country. It was suggested that some sort of safeguard may be provided in the law to protect the Board/ Management of the commercial organization from harassment by police.

7.7. The Department of Personnel and Training felt that uniform guidelines need to be provided by the Union Government for all commercial organisation to prevent corrupt activities therein. The Department stated that the incharge of commercial organisation, where his consent or connivance exists, can be prosecuted vicariously, otherwise the employee or agent who pays bribe to public servant shall be prosecuted. The Department further stated that the punishment for bribe giving by any individual or entity including commercial organization is the same. Both the bribe giver and bribe receiver are equal partners in the offence of corruption. The suggestion of restricting the punishment to monetary fine on bribe giver shall take away the element of deterrence from the proposed provision. The DoPT has also agreed to delete the terms 'charitable organization' from the definition of commercial entity.

Observation/Recommendation of the Committee

7.8. The Committee recommends that in the explanation Clause in the amendment to Section 9 (3), the definition of the word 'business' should exclude the words 'including charitable services'. The Committee further recommends that in the proposed Section 10, the words 'in court' be added after the words 'and such offence is proved'. The Committee agrees with other aspects of the proposed Sections 9 and 10 as mentioned in the official amendments proposed by the Government.

7.9. The Committee further recommends that the word 'offer' used in the proposed Section 9 (1) may be omitted.

7.10. The Committee is in agreement with the Section 10, as proposed to be amended by the official amendments.

7.11. The proposed Sections 9 and 10 in the Prevention of Corruption Act, 1988 may accordingly, be incorporated as under:

“9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation gives or promises to give any undue advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person gives or promises to give any undue advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(c) "business" includes a trade or profession or providing service;

(d) a person is said to be associated with the commercial organisation if, irrespective of any promise to give or giving of any undue advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions relating to the adequate

procedures which can be put in place by the commercial organisations to prevent persons associated with them from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary.

10.(1) Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, "director", in relation to a firm means a partner in the firm."

Clause 5

(Omission of Section 11 of the PC Act)

8.0. The omission of Section 11 is necessitated because of the fact that the definition of offences envisaged therein is to be substituted by making Sections 7, 8, 9 and 10 quite comprehensive.

Observation/Recommendation of the Committee

8.1. The Committee recommends that the Clause 4 of the Government Bill may be treated as Clause 5 in the Bill reported by it and endorses the deletion of Section 11 from PC Act, 1988 in view of reasons of attributed supra.

Clause 6

(Substitution of Section 12 of the PC Act)

9.0. The Clause 5 in the Government Bill is treated as Clause 6 in the Bill reported by the Committee. The said clauses prescribes equal minimum and maximum punishment to the abettor as prescribed for bribe giver/taker.

9.2. Most stakeholders agreed to the amendment proposed by the Government.

Observation/Recommendation of the Committee

9.3. The Committee endorses amendment to Section 12 of the Prevention of Corruption Act, 1988 for enhancement of punishment for abettor in the offence enumerated in preceding Sections of the said Act.

9.4. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

"12. Whoever abets any offence punishable under this Act, other than any offence under section 15, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

Clause 7

(Amendment to Section 13 of the PC Act)

10.0. The Clause 6 of the Government Bill is treated as Clause 7 in the Bill reported by the Committee which substitutes Section 13 of the Principal Act.

10.1. The Clause states that misappropriation of Government property and possession of assets disproportionate to his/ her known source of income would constitute criminal misconduct on the part of the public servant. Explanation to Section 13(b) states that intentional enrichment shall be presumed if public servant fails to give satisfactory account of the

property in his/her possession or in the possession of any person in his/her behalf. Explanation is given to elucidate the definition of the terms “known sources of income”.

10.2. It was suggested that the word ‘otherwise’ in Section 13(1) (a) used before the word ‘convert’ appears to be vague and liable to be misused.

10.3. In the course of deliberations, Members raised concern about the use of the terms ‘lawful sources’ in Section 13 of the Prevention of Corruption Act, 1988. It was observed that many a time, courts do not accept lawful sources as recognized by other authorities or statutory bodies. It was felt that there is a need to define the term to avoid multiple interpretations by the court of law.

10.4. It was also suggested to the Committee that Section 13(1) (d) (iii) of the Prevention of Corruption Act, 1988 covers new species of crime related to corruption which was not contemplated under Prevention of Corruption Act, 1947. The present amendment proposes to alter the said Section to the extent of deleting Section 13 (1) (d) (iii) which may not be appropriate to contain corruption where bureaucrats in connivance with politician causes pecuniary benefit to any private party without having proper consideration of public interest. A three Bench judgement of Delhi High Court in the matter of Runu Ghosh and others Vs. Central Bureau of Investigation (CBI) has upheld the said Section in 2011 which has not yet been overruled by the Supreme Court. However, most stakeholders agreed to the amendment proposed by the Government.

Observation/Recommendation of the Committee

10.5. The Committee agrees with amendment proposed to Section 13 of the PC Act, 1988 under the Clause as proposed by the Government.

10.6. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation 2.—In Explanation 1, “known sources of income” means income received from any lawful sources.”.

Clause 8

(Substitution of Section 14 of the PC Act, 1988 for Enhancement of Punishment for Habitual Offender)

11.0 The Clause 7 of the Government Bill, which seeks to amend Section 14 of the Act, is now considered as Clause 8 of the Bill reported by the Committee. The amendment proposes enhanced imprisonment of five years and ten years, as minimum and maximum punishment, respectively.

11.1. Most stakeholders appreciated enhanced punishment for habitual offenders.

Observation/Recommendation of the Committee

11.2. The Committee endorses enhanced punishment from three to five years imprisonment as minimum punishment for habitual offenders under Clause 8 of the Bill.

11.3. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“For Section 14 of the principal Act, the following section shall be substituted, namely:—

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine."

Clause 9

(Consequential amendment to Section 15 of the PC Act, 1988)

12.0. Clause 8 of the Government Bill, which seeks to amend Section 15 of the Principal Act is treated as Clause 9 in the Bill reported by the Committee.

Recommendation of the Committee

12.1. The Committee agrees with the amendment to Section 15 of the PC Act as it is a consequential amendment pursuant to the amendment of Section 13.

12.2. The Committee accordingly, endorses the clauses.

Clause 10

(Consequential changes to Section 16 of the PC Act, 1988)

13. The Committee also recommends following consequential amendments to Section 16 of the Principal Act:

“In Section 16 of the Principal Act—

for the words, brackets and figures, "sub-Section (2) of Section 13 or Section 14", the words, figures and brackets "Section 7 or Section 8 or Section 9 or Section 10 or sub-Section (2) of Section 13 or Section 14 or Section 15" shall be substituted;

for the word, brackets and letter “clause (e)” the word, brackets and letter “clause (b)” shall be substituted.”

Clause 11

(Consequential amendment to Section 17)

14.0. Amendment to second proviso to Section 17 is a consequential amendment in view of the amendments to Section 13 of the Act.

Recommendation of the Committee

14.1. The Committee agrees with the amendment as it is a consequential amendment pursuant to the amendment of Section 13.

14.2. The Committee, accordingly, endorses the Clause.

Clauses 12 and 14

(Protection to Public Servant (Both Serving and Retired) for *Bona fide* Acts of Omission and Commission under PC Act, 1988)

15.0. Clause 12 of the Bill reported by the Committee seeks to insert new Section-17A after Section 17 of the PC Act, 1988. Further, Clause 14 of the Bill to be reported is the same as Clause 10 of the Government Bill which seeks to amend Section 19 of the Principal Act to

extend protection to retired government servants for the *bonafide* acts of omission and commission done while in the office.

15.1. The official amendment intends to insert a new Section 17A to make it obligatory on the police/probe agency to obtain sanction of Lokpal, in cases involving employees of the Union, and of respective Lokayuktas, in cases involving employees of the States, before initiating any inquiry/investigation against a public servant in all cases of corruption except where the public servant is caught red-handed. Any complaint to police/probe agency shall be treated as a deemed complaint to Lokpal or Lokayukta as the case may be. However, sanction of prosecution would remain with Competent Authority and that authority shall have to convey its sanction within a period of three months which can be extended by another period of one month where consultation with Attorney General/Advocate General is required.

15.2. Several stakeholders stated that the grant of sanction of prosecution by Lokpal/Lokayukta for prosecuting public servants under Section 23 of the Lokpal & Lokayuktas Act, 2013 may be *ultra vires* of Article 311 of Constitution. It was felt that disciplinary/appointing authority should retain the power to grant sanction of prosecution of Government servant as that authority is well-versed with the functioning and conduct of his/her employee.

15.3. It was suggested that previous sanction for launching investigation/inquiry against public servant is apparently discriminatory *vis-à-vis* the bribe giver who is a common man. Therefore it may not be necessary in the PC Act.

15.4. It was also suggested by some stakeholders that the requirement of prior sanction for prosecution currently available to serving public servant may be extended to retired Government Servant under the PC Act for the official acts done while in service. An empowered Committee comprising of Central Vigilance Commissioner and the Secretary of the Department concerned in the case of Officers below the rank of Secretary and a Committee comprising of the Central Vigilance Commissioner and the Cabinet Secretary in the case of officer of the rank of Secretary may be constituted to sanction of prosecution within two months. Similarly, arrangement may be made for the officers of State Governments. In the case of refusal, the reasons for such refusal should be placed before the respective legislature annually. It was further suggested that Sanction for investigation by CBI may be left to a Committee comprising the CVC and Secretary of the Department concerned in the case of officer below the rank of Secretary and a Committee comprising the CVC and Cabinet Secretary in the case of officer of the rank of Secretary.

15.5. The Central Vigilance Commission has proposed that permission for investigation may be granted as follows:

- Group B,C and D Employees: Head of Concerned Department
- Employees covered under CVC Act, 2003 (Other than Joint Secretary and above): CVC
- Joint Secretaries and above and other high dignitaries: Lokpal

The Commission has stated that the proposed Section 17A (2) will also lead to usurpation of its power by another statutory authority, namely, the Lokpal.

15.6. Central Bureau of Investigation opposed the provisions as it may cause unnecessary delay in investigation. PSUs/PSBs and State Governments supported that Competent Authority should be the sanctioning authority for investigation and prosecution, while, Members of civil society have supported the Lokpal/Lokayukta to be the sanctioning authority.

15.7. Some Members of the Committee suggested that a committee consisting of a retired judge of High Court, the retired IPS officer in the rank of IG and retired IAS officer in the rank of Principal Secretary, would grant sanction of prosecution within a period of three months and four months where consultation is required with Attorney General for India. The expiry of such period may be treated as deemed sanction.

Observation/ Recommendation of the Committee

15.8. The Committee notes that almost all State Governments/UT Administration are of the view that the power of granting sanction for prosecution should remain with the Competent/Appointing Authority of appropriate Government for practical reasons and administrative convenience. The Committee, therefore, has suggested amendments to proposed Section 17A in the following manner:

“17A (1) No police officer shall conduct any enquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

15.9. The Committee is in agreement with the amendments as proposed by the Government and recommends that Clause 12 as amended for insertion of Section 17A in PC Act, 1988 and Clause 14 as given in the Government Bill for amendment to Section 19 of the Principal Act, be effected.

Clause 13

(Insertion of Section 18A in PC Act for Attachment and Forfeiture of Property)

16.0. Clause 13 of the Bill reported by the Committee seeks to insert new Chapter IVA under Section 18A relating to attachment and forfeiture of property and proceeds of corrupt practices, which was Clause 9 of the Government Bill. Certain official amendments proposed to the clause would enable application of the Prevention of Money Laundering Act, 2002 to attachment and forfeiture cases under the PC Act and where there is a gap the Criminal Law Amendment Ordinance, 1944 would be applicable.

16.1. Certain State Governments stated that the provisions in the Prevention of Money Laundering Act, 2002 permits confiscation of property during the trial period without the approval of competent authority. Similarly, it was pointed out, the Odisha Special Act, 2005 also permits the Officer of the court to confiscate property of corrupt Government Servant during the trial period but the provisions in the Criminal Amendment Law Ordinance, 1944 requires approval of the competent authority to confiscate property of the corrupt public servant. It was suggested that time limit given in the Odisha Special Act, may be considered for inclusion in the proposed Bill.

16.2. Some State Governments stated that the proceeds of corruption are held in false name by the public servant and there is propensity to transfer property quickly when the

corrupt government servant is caught. In this regard, it was submitted that the provisions in Odisha and Bihar Special Courts Act relating to forfeiture and confiscation of property appears to be better where the permission of Special Judge is not required by the prosecuting agency to attach the property. This stops the transfer of that property by the public servant. Thus, the State Governments suggested that those provisions may be imported under proposed Section 18A of the Prevention of Corruption Act. It was further stated that the provisions for attachment of property under the Criminal Ordinance Amendment Law, 1944 and the Prevention of Money Laundering Act, 2003 are out dated whereas the provisions in Odisha and Bihar Special Courts Act are functionally better and may be included in the proposed amendment.

16.3. In this light, the Department of Personnel and Training, submitted that the *Ad interim* attachment of property is essential as there have been cases where the public servant has diverted the property while the investigation is being carried out. This can lead to problems in the investigation process. *Ad interim* attachment is provided under the Criminal Law Amendment Ordinance, 1944. The *Ad interim* attachment of property is also available under the Prevention of Money Laundering Act, 2002 and the Lokpal and Lokatuktas Act, 2013. The Department submitted that the Criminal Law (Amendment) Ordinance, 1944 is more suitable than the provisions of Prevention of Money Laundering Act, 2002 and Odisha/ Bihar Special Courts Act. The Department suggested that the provisions of Prevention of Money Laundering Act, 2002 may be used first and if those fail, provisions under Criminal Law (Amendment) Ordinance, 1944 may be used.

Observation/ Recommendation of the Committee

16.4. The Committee recommends that the Clauses as suggested in the official amendments may be adopted as Criminal Law (Amendment) Ordinance, 1944 and Prevention of Money Laundering Act, 2002 are better suited for the purpose of attachment and forfeiture of property obtained through corrupt practices.

16.5. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

“After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.”

Clause 15

(Substitution of Section 20 of the PC Act)

17.0. The Clause 15 of the Bill being reported by the Committee seeks to substitute Section 20 of the PC Act. The Section states that if, during a trial under the offences mentioned in Section 7, it is proved that the public servant has obtained an undue advantage, it shall be presumed that the advantage was taken by the public servant in order to perform a public function improperly.

Observation/ Recommendation of the Committee

17.1. The Committee recommends that the words ‘relevant public function or activity’

be replaced with 'public duty'. The Committee agrees with the amendment and recommends the adoption of the Clause as provided in the official amendments with the minor changes as suggested above.

17.2. The Committee, accordingly, recommends that the Clause be incorporated as per the following formulation:

"For section 20 of the principal Act, the following section shall be substituted, namely:—

"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or has agreed to receive or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that undue advantage, as the case may be, intending that, in consequence, a public duty would be performed improperly either by himself or by another public servant."

Clause 16

(Amendment of Section 23 of the PC Act)

18.0. Clause 16 of the Bill being reported by the Committee seeks to amend Section 23. The Clause provides for consequential amendments in view of the amendments proposed to Section 13 (1) in the Bill.

Recommendation of the Committee

18.1. The Committee agrees with the amendments being consequential in nature.

Clause 17

(Omission of Section 24 of the PC Act)

19.0. Clause 17 of the Bill being reported by the Committee seeks to omit Section 24 of the Act as the provision shall become redundant in view of the proposed amendments to Sections 7, 8, 9 and 10.

Recommendation of the Committee

19.1. The Committee endorses omission of Section 24 in the Prevention of Corruption Act, 1988 in view of the amendments to Sections 7 and 8 of the Act.

Clause 18

(Insertion of new Section 32 in the Principal Act)

20.0. Clause 18 of the Bill being reported by the Committee seeks to insert new Section 32 in the Principal Act which provides for rule making power to the Central Government. The Government in its official amendments proposed for insertion of this Section providing power to make rules.

Recommendation of the Committee

20.1. The Committee agrees with the proposed amendment.

Clause 19

(Amendment of Schedule to Prevention of Money Laundering Act, 2002)

21.0. Clause 19 of the Bill being reported by the Committee seeks to amend Part A of the Schedule of the Prevention of Money Laundering Act, 2002 and inserts new offences to be covered under the Act. These amendments are necessitated in view of the proposed insertion of new Section 18A in the PC Act by the official amendments.

Recommendation of the Committee

21.1. The Committee agrees with the proposed amendment.

Clause 1, the Enacting Formula and Title

22. Clause 1, The Enacting Formula and the Title were adopted with some changes which are consequential in nature namely, '2013' and 'Sixty-fourth' to be substituted by '2016' and 'Sixty-seventh', respectively.

23. The Committee recommends that the Bill as reported by it may be passed.

**THE PREVENTION OF CORRUPTION (AMENDMENT)
BILL, 2013**

As Reported by the Select Committee

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2013

As reported by the Select Committee

[Words and figures underlined indicate the amendments and (***) mark indicates the omission suggested by the Select Committee]

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2016

A bill further to amend the Prevention of Corruption Act, 1988.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Corruption (Amendment) Act, 2016.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

49 of 1988.

2. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in section 2. after clause (c), the following clause shall be inserted. namely:—

Amendment of section 2.

(d) "undue advantage" means any gratification whatever other than legal remuneration.

Explanation.—For the purposes of this clause,—

(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation. which he serves, to receive.'.

(c) (***)

Amendment of section 4.

3. In section 4 of the principal Act. after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the case:

Provided that in case the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years."

Substitution of new sections for sections 7, 8, 9 and 10.

4. For sections 7, 8, 9 and 10 of the principal Act, the following sections shall be substituted, namely:—

Offence relating to public servant being bribed.

7. Any public servant who,—

(a) obtains or accepts (***) or attempts to obtain from any person, an undue advantage, intending that in consequence a public (**) duty would be performed improperly or dishonestly either by himself or by another public servant; or

(b) (***) obtains or (**) accepts or attempts to obtain, an undue advantage as a reward for the improper or dishonest performance (whether by himself or by another public servant) of a public (**) duty; or

(c) (***)

(d) performs, or induces another public servant to perform, improperly or dishonestly a public (**) duty in anticipation of or in consequence of (**) accepting an undue advantage from any person,

shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under this section .

Explanation 2.—For the purpose of this section,—

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing position his as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains (***) or accepts, or attempts to obtain (or is to (***) accept or attempt to obtain) the advantage directly or through a third party.

Explanation. 3.—(***)

Explanation 4.— (***)

(2) (***)

Offence relating to bribing of a public servant.

8. (1) Any person who (**) gives or promises to give an undue advantage to another person and intends such undue advantage—

(i) to induce a public servant to perform improperly a public (**) duty; or

(ii) to reward such public servant for the improper performance of public (***) duty; (***)

(b) (***)

shall be punishable with imprisonment for a term which(***) may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.

Illustration.— A person, 'P' gives a public servant. 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.

9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation (***) gives or promises to give any undue advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Offence relating to bribing a public servant by a commercial organisation.

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person (***) gives or promises to give any undue advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service (***);

(c) a person is said to be associated with the commercial organisation if, (***) irrespective of any (***) promise to give or giving of any undue advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under section 8 and this section shall be cognizable. 2 of 1974.

(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions relating to the adequate procedures which can be put in place by the commercial organisations to prevent persons associated with them from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary.

Person in charge of commercial organisation to be guilty of offence.

10. (1) Where an offence under section 9 is committed by a commercial organisation and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be(***) guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) (***)

Explanation.—For the purposes of this section, "director", in relation to a firm means a partner in the firm.

Omission of section 11.

5. Section 11 of the principal Act shall be omitted.

Substitution of new section for section 12.

6. For section 12 of the principal Act, the following section shall be substituted, namely:—

Punishment for abetment of offences defined in the Act.

"12. Whoever abets any offence punishable under this Act, other than any offence under section 15, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

Amendment of section 13.

7. For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct, —

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession or has, at any time during the period of his office, been • in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation 2.—In Explanation 1, "known sources of income" means income received from any lawful sources."

8. For section 14 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 14.

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine."

Punishment for habitual offender.

9. In section 15 of the principal Act, for the words, brackets and letters "clause (c) or clause (d)", the word, brackets and letter "clause (a)" shall be substituted.

Amendment of section 15.

10. In section 16 of the principal Act,—

Amendment of section 16.

(a) for the words, brackets and figures. "sub-section (2) of section 13 or section 14, the words, figures and brackets "section 7 or section 8 or section 9 or section 10 or sub section (2) of section 13 or section 14 or section 15" shall be substituted;

(b) for the word, brackets and letter "clause (e)" the word, brackets and letter "clause (b)" shall be substituted.

11. In section 17 of the principal Act, in the second proviso, for the words, brackets, letter and figure "clause (e) of sub-section (1)", the words, brackets, letter and figure "clause (b) of subsection (1)" shall be substituted.

Amendment of section 17.

12. After section 17 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 17A.

"17A. (1) No police officer shall conduct any enquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

Enquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to, be

recorded in writing by such authority, be extended by a further period of one month.

Insertion of
new Chapter
IVA.

13. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

'CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

Provisions of
Criminal Law
Amendment
Ordinance,
1944 to apply
to attachment
under this Act.

18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

15 of 2003.
Ord. 38 of
1944.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".'.

Ord. 38 of
1944.

18B. (***)

18C. (***)

18D. (***)

18E. (***)

18F. (***)

18G. (***)

18H. (***)

18I. (***)

18J. (***)

18K (***)

18L (***)

18M (***)

18N. (***)

Amendment of
Section 19.

14. In section 19 of the principal Act, in sub-section (1),—

(i) for the words and figures "sections 7, 10, 11, 13 and 15", the words and figures "sections 7, 13 and 15" shall be substituted;

(ii) in clause (a), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iii) in clause (b), for the words "who is employed", the words "who is employed, or as the case may be, was at the time of commission of the alleged offence employed" shall be substituted;

(iv) after clause (c), the following provisos shall be inserted, namely:

"Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

2 of 1974

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigating agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or the competent authority, as the case may be, shall convey its decision under this sub-section within a period of three months, which may, for reasons to be recorded in writing by the appropriate Government or the competent authority, that the consultation with the Attorney General or the Advocate General, as the case may be, is required, be extended by a further period of one month."

15. For section 20 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 20.

"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or has agreed to receive or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that undue advantage, as the case may be, intending that, in consequence, a (***) public (***) duty would be performed improperly either by himself or by another public servant."

Presumption
where public
servant
accepts any
undue
advantage
(***)

16. In section 23 of the principal Act,—

Amendment
of section 23.

(a) in the marginal heading, for the word, figures, brackets and letter "section 13 (1) (c)", the word, figures, brackets and letter "section 13 (1) (a)" shall be substituted;

(b) for the word, brackets and letter "clause (c)", the word, brackets and letter "clause (a)" shall be substituted.

17. Section 24 shall be omitted.

Omission of
section 24.

18. After section 31 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
32.

"32. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) prescribing guidelines about the adequate procedures which can be put in place by commercial organizations to prevent persons associated with them from bribing any person being a public servant, under sub-section (5) of section 9;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so,

however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Amendment
of Ordinance.

(***)

Amendment
of Act 25 of
1946.

(***)

Amendment
of Act 15 of
2003.

19. In the Prevention of Money Laundering Act, 2002, in Part A of the Schedule, for Paragraph 8, the following Paragraph shall be substituted. namely:—

"PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Offence relating to public servant being bribed.
8	Offence relating to bribing a public servant.
9	Offence relating to bribing a public servant by a commercial organisation.
10	Person in charge of commercial organisation to be guilty of offence.
12	Punishment for abetment of offences defined in the Act.
13	Criminal misconduct by a public servant.
14	Punishment for habitual offender."

MINUTES

I**FIRST MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 4:00 P.M. on Monday, the 21st December, 2015 in Room No. '63', First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Mani Shankar Aiyar
4. Shri Shantaram Naik
5. Shri Satish Chandra Misra
6. Shri K.N. Balagopal
7. Shri Anubhav Mohanty
8. Shri Sanjay Raut
9. Shri Naresh Gural
10. Shri D. Raja
11. Shri Rajeev Chandrasekhar

SECRETARIAT

Dr. D. B. Singh, Secretary

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

2. The Chairman welcomed the Members to the introductory meeting of the Select Committee and requested the Members to suggest broad outlines of working of the Committee. In response, the Members gave several inputs. Some Members suggested that there is a need to examine the overlapping of different Acts relating to corruption related issues. Also there is an imminent need to have an independent legislation for Central Bureau of Investigation (CBI).

3. Based on the suggestions given by the Members, the Committee decided to solicit views of following stakeholders:—

- Investigative Agencies of the Union and State Governments viz. Central Bureau of Investigation (CBI), Central Vigilance Commission (CVC), Comptroller and Auditor General of India (CAG), Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC).
- Civil Society Groups involved in Anti-Corruption Movement.
- Legal Luminaries.
- Government Employees Associations of Union and State Governments.
- Corporate Entities.
- Consumer Activist.

4. In order to solicit the views of the civil society, the Committee decided to issue a Press Communique on the Bill and the amendments moved by Government. The Committee further decided to visit certain States to interact with State Governments, Anti Corruption Bureau (ACB), State Government Employees Associations, Chambers of Commerce & Industries, Public Sector Undertakings/Banks, and other stakeholders.

5. The Committee adjourned to meet on 12th and 13th January, 2016, to hear the views of Secretary, Department of Personnel and Training (DoPT), CBI, CVC, CAG, Enforcement Directorate (ED), CBDT and CBEC.

II**SECOND MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 11.30. A.M. on Tuesday, the 12th January, 2016 in Committee Room D, Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Dr. Chandan Mitra
3. Shri Bhupender Yadav
4. Shri Mani Shankar Aiyar
5. Shri Shantaram Naik
6. Shri Bhubaneswar Kalita
7. Shri Sukhendu Sekhar Roy
8. Shri A. Navaneethakrishnan
9. Shri Satish Chandra Misra
10. Shri Praful Patel
11. Shri Sanjay Raut
12. Shri Naresh Gujral
13. Shri D. Raja
14. Shri Hishey Lachungpa
15. Shri Rajeev Chandrasekhar

SECRETARIAT

Shri D.B. Singh, Secretary

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

WITNESSES**I. Representatives of Central Vigilance Commission (CVC)**

- (i) Shri K.V. Chowdary, CVC;
- (ii) Shri Rajiv, VC;
- (iii) Shri T.M. Bhasin, VC;
- (iv) Smt. Nilam Sawhney, Secretary;
- (v) Shri Salim Haque, A.S.; and
- (vi) Shri J. Vinod Kumar, Director.

- I. Representatives of Central Bureau of Investigation (CBI)
 - (i) Shri Anil Kumar Sinha, Director;
 - (ii) Shri R.P. Agarwal, JD/AC;
 - (iii) Shri Prabodh Kumar, JD;
 - (iv) Shri R.S. Bhatti, JD;
 - (v) Shri A. Sai Manohar, DD; and
 - (vi) Shri Joginder Nayak, OSD.
- II. Representatives of Central Board of Excise & Customs (CBEC)
 - (i) Shri Najib Shah, Chairman;
 - (ii) Smt. V.N. Sarna, Member (P&V);
 - (iii) Shri R.K. Mahajan, CVO;
 - (iv) Shri R.D. Negi, Pr. ADG(Vig.); and
 - (v) Smt. Neeta Lall Butalia, ADG (Vig.).
- III. Representatives of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training)
 - (i) Shri Jishnu Barua, Joint Secretary; and
 - (ii) Shri Rakesh Kumar, Director.
- IV. Representatives of Ministry of Law and Justice (Legislative Department) Legislative Department
 - (i) Dr. Reeta Vasistha, Additional Secretary; and
 - (ii) Shri R. Sreenivas, Addl. L.C.
- V. Representatives of Department of Legal Affairs
Shri R.S. Verma, Deputy Legal Counsel.

2. At the outset, the Chairman welcomed the Members of the Committee and apprised them of the agenda of the meeting, *viz.* interaction on the provisions of the Bill with the representatives of the Central Vigilance Commission (CVC), Central Board of Excise and Customs (CBEC) and Central Bureau of investigation (CBI).

Deposition of Central Vigilance Commission

3. Thereafter, he welcomed Chief Vigilance Commissioner and other members and officers of the CVC to the meeting and requested him to submit the views of the Commission on the Bill as well as official amendments proposed thereto by the Government in 2015.

4. The Central Vigilance Commissioner apprised the Committee of the structure and functions of the Commission. Referring to the role of the commission, he submitted that the CVC has been conceived as the apex vigilance institution to exercise superintendence and control over the vigilance administration of various State Government, Ministries, Departments and Organisations of the Union Government. It also monitors the progress of investigation and progress of application pending with competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.

4.1. Lauding proposed amendments to the Prevention of Corruption Act, 1988 as comprehensive, he was of the view that the amendment proposed were largely in compliance with the provisions of United Nations Convention Against Corruption (UNCAC) and also reconciled with the provisions of the Lokpal & Lokayuktas Act, 2013. He suggested the following to strengthen the Prevention of Corruption Act :—

- (i) Many Central Public Sector Undertakings and Public Sector Banks in their normal business activities require opinions/certificate/report of professionals *viz.* Valuers, Advocates, Architect, Chartered Accountants, Consultants, etc. who are paid from tax payer's money. Sometimes those professionals in connivance with customers render misleading/false advice with malafide intention causing loss to exchequer. Thus, those professionals who tender advice on payment from government fund should be held liable for their misconduct of tendering wrong and misleading advice by bringing them under the definition of 'public servant' under Section 2(c)(i) of the Principal Act.
- (ii) While the Vice-Chancellor, Member of any governing body, Professor, Reader, Teacher or any employees of any university are covered under the definition of public servant under Section 2(c)(xi) of the Prevention of Corruption Act, employees of private colleges affiliated to University are not covered under ambit of the public servant, which needs to be included for the purpose of Prevention of Corruption Act.
- (iii) While sharing pendency of cases beyond four years (4000 cases) out of total 6600 pending cases, he averred that the outer limit of four years proposed for completion of trial is impractical and requires relook. He suggested that a safeguard provision may be given to save pending cases beyond four years from being quashed by the superior courts in view of the judgement of apex court to quash the cases, if the trial is not completed within a reasonable time, regardless of its merit.
- (iv) Conduits/brokers/third party in the chain of bribery which was covered under Section 13 (1)(d)(iii) of the Prevention of Corruption Act appeared to have not been covered under the proposed amendment. In his view getting benefit from the third party or giving benefit to third party by the public servant may not be necessary to prove criminal misconduct of public servant. The act of omission like the act of commission many a time amount to corruption, this may be included in the definition of criminal misconduct;
- (v) Inclusion of trust and sole proprietorship in the definition of commercial organizations as they are mostly engaged in commercial activities or business;
- (vi) Additional obligation may be cast upon the management of commercial organization to report the incidents of corrupt practices as and when noticed to the designated authority;

4.2. While appreciating the new provisions under Section 17A by affording protections to decision making function of all categories of public servants from malicious investigation by police or probe agencies, the Commissioner raised apprehension that the Lokpal might be overburdened with complaints relating to all categories of government servants and public servants and it might be unwieldy for that agency to process and decide those cases resulting in delay. In alternative he has suggested that Head of the Department for public servants in the categories of Groups B, C and D, the CVC for Group A officers below Joint Secretary level and the Lokpal for Group A officers of the rank of Joint Secretary and above may be made competent authority to grant sanction for investigation which would ease the system and ensure speedy disposal of corruption complaints to police or police agencies.

4.3. He was of the view that Section 17A(2) would amount to bringing one statutory body *i.e.* CVC under purview of another statutory body—Lokpal which might cause overlapping and create confusion, as all complaints received by the CVC need to be referred to Lokpal for its consideration.

4.4. The Commissioner further submitted that the time limit of three months for grant of sanction of prosecution proposed under the Bill appeared to be inadequate particularly in the case of All India Service Officers and the same must be enhanced to six months.

4.5. Referring to the proposed new Section 18A, the commissioner was of the view that provisions under the Criminal Law Amendment Ordinance, 1944 is complicated so far as attachment and forfeiture of property is concerned. He suggested that provisions of Odisha or Bihar Special Court Acts are simplified and also upheld by the apex court may be adopted in the Prevention of Corruption Act.

5. The Members raised the following queries related to the presentation made by the CVC:—

- (i) Should the definition of 'Public Servant' be further enlarged and include private professionals in the field of medicine, journalism or prosecuted under Indian Penal Code for breach of trust etc. who provide advice/opinion on payment from state exchequer ?
- (ii) In case a trial court is not able to complete a trial within four years, what would be the fate of the case?
- (iii) What is the meaning of the phrase 'Lawful source' as used in the Bill in terms of determining legitimacy of income?
- (iv) Should acts of omission and willful negligence by public servants be covered under the Prevention of Corruption Act?
- (v) Should willful defaults in cases of loans taken from Public Sector Banks be included as offences covered under Prevention of Corruption Act, 1988 as the public money has become NPA by way of bank fraud?

(Representatives of CVC withdrew at this stage)

Deposition of CBI

6.0. The Director, CBI stated that the introduction of Section 17A into the Prevention of Corruption Act would pose impediment to due investigation process and might delay it. Further, it is in contravention of Articles 6(2)-and 36 of UNCAC and amounted to reintroduction of Section 6A of Delhi Special Police Establishment Act, 1946. He also submitted that Lokpal is yet to be appointed and several States do not have a Lokayukta. Besides posing challenge to those bodies to process complaints expeditiously, investigative agencies would be prevented from holding even a preliminary enquiry to gather basic information before seeking previous approval of launching investigation. He mentioned that investigative agencies of other UNCAC and OECD Anti-Bribery compliant countries did not require prior approval of ombudsman or oversight bodies for launching investigation into acts of corruption.

6.1. With respect to attachment of property, the Director submitted that the Law Commission in its 249th Report had recommended to repeal Criminal Law (Amendment) Ordinance, 1944 being obsolete. He was of the view that the provisions of Odisha Special Courts Act, 2006 and Bihar Special Courts Act, 2009 are better suited for the purpose of attachment and forfeiture of property which has gained currency in USA, UK, Australia, Canada and other European Countries.

6.2. The Director, CBI submitted that Sections 8, 9 and 10 of prevention of Corruption Act, 1988 cover middle men and other private persons, which are not covered under the Bill. It was suggested that Sections, 8, 9 & 10 might be retained. The bribe taken by middleman on behalf of the public servant which was clearly covered under Sections 8 & 9 the Prevention of Corruption Act need to be covered under the proposed amendment. It was suggested to replace the words 'agrees to receive' with 'agrees to accept' because acceptance requires intention to keep it under Section 7 of the Prevention of Corruption Act.

6.3. It was further suggested by the Director that introduction of alien terms into the Act viz. 'improper performance', 'public function or activity', would lead to subjective interpretation of law and lead to delay in cases.

6.4. The Director supported the extension of the ambit of definition of public servants to include Public-Private-Partnerships and NGOs substantially funded by the Government.

6.5. The Director suggested that the quantum of punishments for acts of bribery should be commensurate with the gravity of offence and the Committee may explore the option of providing differential punishments based on the amount of bribe taken by the public servant.

(Representatives of CBI withdrew)

Deposition of Central Board of Excise & Customs

7.0. The Chairman, CBEC stated that CBEC has only a limited role to play in the enforcement of the Prevention of Corruption Act, 1988. The Board has robust Directorate General of Vigilance which refers all corruption related cases to the CBI in consultation with CVC. He, however, welcomed the amendments to the Bill.

7.1. In response to a query raised by Members of the Committee regarding any contradiction between the Customs Act, Central Excise Act and the Finance Act with the PC (Amendment) Bill, the Chairman, CBEC submitted that there were no apparent contradictions amongst these laws.

(The witnesses then withdrew)

8. The Committee decided to meet next at 11.30 A.M. on the 13th January, 2016.

9. Verbatim record of meeting of the Committee was kept.

10. The meeting adjourned at 1.48 P.M.

III**THIRD MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 11:30 A.M. on Wednesday, the 13th January, 2016 in Room No. 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Mani Shankar Aiyar
3. Shri Shantaram Naik
4. Shri Bhubaneswar Kalita
5. Shri Naresh Agrawal
6. Shri A. Navaneethakrishnan
7. Shri Satish Chandra Misra
8. Shri K.N. Balagopal
9. Shri Anubhav Mohanty
10. Shri Devender Goud T.
11. Shri Sanjay Raut
12. Shri Naresh Gujral
13. Shri Rajeev Chandrasekhar
14. Shri Tiruchi Siva

SECRETARIAT

Dr. D. B. Singh, Secretary
Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

WITNESSES

- I. Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training (DoPT)
 1. Shri Sanjai Kothari, Secretary;
 2. Shri Jishnu Barua, Joint Secretary; and
 3. Shri Rakesh Kumar, Director.
- II. Central Board of Direct Taxes (CBDT)
 1. Shri A.K. Jain, Chairman;
 2. Smt. Surbhi Sinha, Member(P&V);

3. Shri Gopal Mukherjee, Pr. DGIT (Vig.); and

4. Shri Rakesh Gupta, ADG (Vig).

III. Directorate of Enforcement (ED)

1. Shri Karnal Singh, Director; and

2. Shri Ashish Chandra Singh, Depy. Legal Advisor.

IV. Comptroller & Auditor General of India (C&AG)

Shri S.C. Pandey, Director General, (Strategic Management Unit).

V. Ministry of Law & Justice Legislative Department

1. Dr. Reeta Vasistha, Additional Secretary; and

2. Shri R. Sreenivas, Additional Legislative Counsel.

Department of Legal Affairs

Shri R.S. Verma, Deputy Legal Counsel.

2. At the outset, the Chairman welcomed the Members of the Select Committee and apprised them that the Department of Personnel and Training (DoPT), Central Board of Direct Taxes (CBDT), Enforcement Directorate(ED) and Comptroller and Auditor General of India (C&AG) have been invited to present their views on the Prevention of Corruption (Amendment) Bill, 2013 as well as official amendments moved thereto in 2015.

(After the arrival of Secretary, DoPT)

Deposition of Secretary, DoPT

3. The Chairman invited Secretary, DoPT and other Officers from Departments of Personnel & Training and Legal Affairs and Legislative Department to the meeting of the Committee. He directed the Secretary to provide a draft Bill incorporating all amendments moved by the Government in 2015 for use of Members of the Committee. Thereafter, he requested him to make presentation on provisions of the Bill.

4. The Secretary in his deposition outlined the salient aspects of the Bill; *raison d'être* for the amendments to the Prevention of Corruption Act, 1988 and linkage between the PC Act, 1988 and Lokpal and Lokayukta Act, 2013. Thereafter, he requested the concerned Joint Secretary to make power point presentation to elaborate the specifics of the amendments moved to the PC Act, 1988.

4.1. The Joint Secretary in his opening observation mentioned that the amendments to the PC Act, 1988 had been necessitated subsequent to ratification of United Nations Convention Against Corruption (UNCAC) by our country in May, 2011 so as to bring domestic laws in line with current international practices.

4.2. Through power point presentations he apprised that the Standing Committee on Personnel, Public Grievances, Law and Justice and Law Commission of India have examined the Prevention of Corruption (Amendment) Bill, 2013 and submitted their reports thereon. The official amendments proposed by the Government in May 2015 along with the Bill have been referred to the Select Committee for its consideration. He referred to the recommendations of the Standing Committee on the provisions of attachment and forfeiture of the property of corrupt public servants; punishment for commercial entities for bribing public servant and extension of protection given to serving government servants to the retired Government Servants, etc. He also referred to the recommendations of Law Commission on the issue of seeking approval of Lokpal/Lokayukta for investigation against public servant by the Police and linkage of the Prevention of Money Laundering Act, 2002 with the PC Act, 1988 in the matter relating to procedure for attachment and forfeiture of property of public servant.

4.3. He added that offering of bribe to public servant by anyone directly or indirectly would now be a criminal offence. Possession of disproportionate assets would constitute a proof of intentional illicit enrichment which would be a criminal misconduct. Elaborating justification for insertion of Section 17A in the Prevention of Corruption Act, 1988, he submitted that Section 6A of Delhi Special Police Establishment Act, 1946 has been struck down by the apex court being violative of Article 14 of the Constitution. Previous sanction of Lokpal/Lokayukta for inquiry or investigation by police or probe agencies has been provided under the new Section to protect public servants in bonafide discharge of their duty from malicious prosecution. All complaints or information received by police or any probe agencies against any public servant would now be treated as deemed complaint to Lokpal/Lokayukta under the PC Act. He further added that Lokpal would now be the sole authority to grant sanction for prosecution in respect of all public servants under Section 23 of the Lokpal and Lokayukta Act, 2003 which overrides the power of Central/State Government to grant sanction under Section 197 of CRPC, 1973 and Section 19 of PC Act, 1988. In that context, he submitted that the authority which is competent to remove the public servant would now be deprived of the power of deciding upon grant of sanction of prosecution since Section 19 of the PC Act has become redundant. It was apprehended that the Lokpal might be unduly overburdened for processing complaints made to police or probe agencies against all categories of public servants.

5. Members posed following queries to the Secretary:—

- (i) Whether 'forbearing to do any official act', 'not to perform official duty' or 'wilful negligence' amount to criminal misconduct under the proposed amendment to the PC Act as public servants very often expect and demand bribe to deliver public services;
- (ii) Whether assurance of freebies by political parties on the eve of election could be construed as corruption as people are deceived to believe in such promises;
- (iii) Whether gifts received by public servant amount to illegal gratification;
- (iv) Whether willful defaulters of bank's loan causing NPA for the Banks could be prosecuted under PC Act;
- (v) Whether good provisions of Special Court Acts, 2006 and 2009 of Odisha and Bihar, respectively, could be incorporated in the PC Act for seizure and forfeiture of property of the corrupt public servant;
- (vi) What are the obstructions in making Lokpal/Lokayukta as sanctioning authority for prosecution against corrupt judges;
- (vii) Whether punishment is to be proposed for investigating/prosecuting agencies if the cases are not completed within the maximum period of four years as proposed in the official amendment;
- (viii) Whether act of bribery in Public Private Partnership Projects (PPP) could be brought under the purview of the Prevention of Corruption Act, 1988;
- (ix) Whether there is any move to define the terms like, 'lawful source' in the phraseology 'income from lawful sources' in the present amendment; and
- (x) What are the modalities of formulation of code of conduct for corporate entities to deter their agents or employees to bribe public servants for furtherance of their business interest.

5.1. Members sought justification for putting coercive and collusive bribe givers on similar footing. It was felt that shifting of power of sanction for prosecution and investigation against public servant to Lokpal/Lokayukta may lead to creation of parallel structure in Government which may create obstruction in day-to-day functioning.

5.2. Chairman directed DoPT to send written replies to the queries of Members within two weeks' time.

Deposition of Chairman, CBDT

6.0. The Chairman of CBDT through power point presentation supported new definition of bribery which included the offence of passive bribery including solicitation and acceptance of bribe through intermediaries. He suggested that minimum quantum of fine may be indicated for commercial entities if their agencies or employees offer bribes to public servants. He averred that additional requirement of proving the intention of public servant to enrich himself/herself illicitly would put higher burden upon the prosecuting agencies which in his view should be shifted to the public servant to prove his/her innocence. He was further of the view that burden of proof to prove his/her innocence in giving bribe should be extended to the bribe giver as well. He appreciated omission of Section 24 from the PC Act, 1988 as that was not used in the case of consensual bribery.

7.0. Members raised doubt about getting evidence as the bribe giver has been proposed to be criminally liable in the act of bribery due to fear of punishment. The new amendments would not give an opportunity to the bribe giver to become an approver after paying the bribe. The comments of CBDT as to existence of any law permitting the bribe taker to become an approver were sought for.

(The witnesses then withdrew, the Committee adjourned for lunch and reassembled)

Deposition of Enforcement Directorate

8. The Director, Enforcement Directorate submitted his views on the provisions of PC Act, 1988, *vis-à-vis* Prevention of Money Laundering Act, 2002 with regard to attachment and forfeiture of property. To the query as to whether money paid to public servant by a foreign company without having any offence in India amount to corruption the answered was positive.

(The witnesses then withdrew)

Deposition of Comptroller and Auditor General

9. The Director General of C&AG was of the view that amendments to proposed PC Act, 1988 would strengthen anti-corruption laws. He supported the amendment for seeking pre-investigation approval of Lokpal/Lokayukta except in the trap cases and disproportionate asset case. He was of the view that the request of Police Officer to Lokpal/Lokayukta should be treated as a complaint to Lokpal and due procedure laid down under Section 20 of Lokpal and Lokayukta Act, 2013 may be followed by giving reasonable opportunities to the public servant and the competent authority to present their views to the Lokpal/Lokayukta for enabling them to give sanction for investigation. It was also pointed out that some of the States are not having Lokayukta. In that situation, the system of prior approval of investigation may be indicated in the Act where there is no Lokpal/ Lokayukta or they lack jurisdiction over certain categories of public servants.

(The witnesses then withdrew)

10. The Chairman informed the Members that the Committee will have its next meetings at Bengaluru, Mumbai and Kolkata to record evidence of State Governments, anti-corruption agencies, chambers of commerce and other stakeholders.

11. The Committee then considered the issue of soliciting the views of the civil society on the provisions of the Bill as well as the amendments proposed by the Government in 2015. It was also decided that since the official amendments proposed by the Government are having far reaching and deep effect on the provisions of the Bill as well as on the Prevention of Corruption Act, 1988, the permission of the Hon'ble Chairman, Rajya Sabha may be obtained for putting the official amendments proposed in 2015 in the public domain for seeking feedbacks on those issues.

12. The meeting adjourned at 2.35 p.m.

IV

FOURTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 3.00 P.M. on Tuesday, the 23rd February, 2016 in Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Mani Shankar Aiyar
4. Shri K.C. Tyagi
5. Shri A. Navaneethakrishnan
6. Shri Praful Patel
7. Shri Anubhav Mohanty
8. Shri Devender Goud T.
9. Shri Sanjay Raut

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

2. The Chairman welcomed the Members to the meeting. Thereafter, the Committee reviewed the progress of examination of the Prevention of Corruption (Amendment) Bill, 2013. The Members expressed satisfaction over the deliberations held, so far. It, however, felt that the State Governments and other stakeholders, whose views have not been heard by the Committee so far, may be heard as well. The Committee also decided that at least two meetings be held for internal discussions. Accordingly, the Committee decided that an extension till Friday, the 29th April, 2016 may be sought for presentation of Report on the said Bill. A resolution to that effect was passed by the Committee as follows:

“The Committee resolves that a motion be moved in the House that the time appointed for presentation of the Report of the Select Committee of the Rajya Sabha on the Prevention of Corruption (Amendment) Bill, 2013, be extended up to Friday, the 29 April, 2016.”

3. The Committee authorized Shri Anubhav Mohanty, in the absence of the Chairman, to move the Motion in the House for this purpose on 25th February, 2016.

4. The Committee also decided that Hon’ble Chairman, Rajya Sabha may be requested under Rule 88 of the Rules of Procedure & Conduct of Business in Rajya Sabha that the Bill along with the official amendments proposed by the Government in 2015 may be published in the public domain. A resolution to that effect was also passed by the Committee as follows:

“The Committee resolves that the Chairman, Rajya Sabha may consider that the official amendments to the Bill proposed by the Government in 2015 to the Prevention of

Corruption (Amendment) Bill, 2013 be placed in the public domain for soliciting views of civil society at large.”

5. The Committee decided to meet next at 4.00 p.m. on the 9th March, 2016.

6. The Committee adjourned at 3.25 P.M.

V

FIFTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 4.00 P.M. on Wednesday, the 9th March, 2016 in Room No. 62, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Dr. Chandan Mitra
3. Shri Bhupender Yadav
4. Shri Mani Shankar Aiyar
5. Shri Shantaram Naik
6. Shri A. Navaneethakrishnan
7. Shri K.N. Balagopal
8. Shri Anubhav Mohanty
9. Shri Devender Goud T.
10. Shri Rajeev Chandrasekhar

SECRETARIAT

- Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

WITNESSES

I. Representatives of Government of NCT of Delhi

- (i) Shri K.K. Sharma, Chief Secretary;
- (ii) Dr. Vasantha Kumar N., Secretary (AR); and
- (iii) Shri Sukesh Jain, Secretary (Vigilance).

II. Representatives of Government of Haryana

- Shri A.K. Singh, Principal Secretary

III. Representatives of Government of Himachal Pradesh

- Shri A.P. Singh, Resident Commissioner

IV. Representatives of State Government of Uttarakhand

- Shri S.D. Sharma, Resident Commissioner
Shri Shiv Kumar Gupta, OSD

V. Representatives of State Government of Chhattisgarh

- Shri Vijay Kumar Hota, Additional Secretary, Department of Law

VI. Representative of State Government of Madhya Pradesh

- Shri R.K. Mishra, Joint Resident Commissioner

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

Shri Jishnu Barua, Joint Secretary

Shri Rakesh Kumar, Director

Ministry of Law and Justice

Legislative Department

Dr. Reeta Vasishta, Additional Secretary

Shri R. Sreenivas, Addl. L.C.

Department of Legal Affairs

Shri R.S. Verma, Deputy Legal Counsel

2. The Chairman welcomed the representatives of the State Governments to the meeting and highlighted the main points contained in the written submissions made by the State Governments. He requested the State Governments to give their views on the new Section 17A sought to be introduced through the official amendments proposed by the Government which seeks to give the power to grant sanction for initiating inquiry or investigation against a public servant by any investigative agency to the Lokpal or Lokayukta of a State. The Chairman also requested the representative of the State Governments to submit their views on the Clauses pertaining attachment and forfeiture of property sought to be introduced through the Government amendments proposed in 2015.

3.0. The Chief Secretary, Government of NCT of Delhi stated that the Government has implemented the provisions of the Delhi Lokayukta and Uplokayukta Act, 1995 which covers the political executive only. He also informed the Committee that the State has an Anti Corruption Bureau but no statutory State Vigilance Commission. The Delhi State Legislature has passed the Delhi Jan Lokpal Bill, 2015 which is awaiting presidential assent. He did not feel the requirement of the proposed new Section 17A of the Bill for checking corruption. He suggested retaining the definition of criminal misconduct given under Section 13 in the amended Act. Further, he stated that inclusion of words like 'intentionally' and 'illicitly' would put extra burden on the investigative agencies. He requested for time to submit their views in writing. The Chairman granted one week's time to submit their written views on the Bill.

4.0. The Principal Secretary, Government of Haryana stated that the State has a Lokayukta Act which was first passed in 1998 and was subsequently repealed and replaced by another Act in 2002. He stated that the office of Lokayukta is currently vacant and the Government is in the process of filling the vacancy. He informed the Committee that the State also has a State Vigilance Bureau which has been very active and is adequately staffed. He felt that the definition of 'undue advantage' in the present Bill is too wide and might lead to harassment of public servants. He further stated that the State Government of Haryana supported the introduction of Section 18A in the Act.

4.1. He also added that the definition Clause of the Act which defines a 'Public Servant' must be expanded to include principals, teachers and members of management of private colleges affiliated to University of Private nature as the education sector has witnessed rising corruption levels.

4.2. Regarding the requirement of prior sanction of Lokpal/ Lokayukta, he expressed stated that the State Government felt that the power must be with either the Competent Authority or a Committee of three members who have knowledge of working of Government Departments. He pointed out that even though the Section 6A of Delhi Special Police Establishment Act, 1946 and the relevant provisions for Sanction for investigation for officers above Joint Secretary rank under the PC Act, have been struck down by the Apex Court on the grounds of violation of Article 14. However, the vigilance manual of the State Government of Haryana providing for grant of sanction for investigation from competent authority for all categories of public servants, the latter was upheld being non-discriminatory.

5.0. The Resident Commissioner, Government of Himachal Pradesh stated that the State has its own Lokayuktas Act as well as a separate enactment for dealing with corruption cases called the Specific Corrupt Practices Act for dealing with forest related offences. He stated that the State has separate Special Courts for dealing with such cases. He also stated in his submission that the while Section 197 of the CrPC protects both the serving and retired public servants, Section 19 of the Prevention of Corruption Act, 1988 protects only the serving public servants. He felt that this anomaly must be rectified.

5.1. With respect to the proposed new Section 17A, the Resident Commissioner stated the in view of Section 6A of Delhi Special Police Establishment Act, 1946 being struck down by the Apex Court, the State Laws which offer similar protection to public servants are in contravention with the Court's ruling. He suggested that there should be no need to seek prior permission for initiating inquiry against a public servant suspected of being involved in corrupt practices in view of the judgement of the Supreme Court.

6.0. The Resident Commissioner, Government of Uttarakhand stated that the State has enacted the Uttarakhand Lokayukta Act, 2014. The State has a Vigilance Act in place as well since 2002. The State has established two Vigilance Courts in Nainital and Dehradun and one anti-corruption Court of CBI in Dehradun. The Resident Commissioner submitted that his government supported the proposed Section 17A of the Bill as similar provisions already exists in the Uttarakhand Lokayukta Act, 2014.

7.0. The Additional Secretary, Department of Law, Government of Chhattisgarh stated that the State has its own Chhattisgarh Lokayukta Act and a Chhattisgarh Special Courts Act, 2015 which cover the entire ambit of corruption related offences by public servants in the State. Further, he stated that the State has twenty one Special Courts to try offences relating to corruption, one in each district, headed by the First class Additional District Judge. His State Government has proposed that the definition of the term 'undue advantage' be made more specific. Similarly, it was submitted that the terms 'improperly performed public function or activity' need to be defined clearly as well.

7.1. He also submitted that there should be a proviso in the Section 17A which should state that if an inquiry has already been initiated by a State Government under its own anti-corruption laws, a duplicate inquiry must not be launched. Further, he stated the grant of sanction for initiating investigation must be with the respective State Governments and not the Lokpal or Lokayukta as the Lokayukta does not have enough knowledge of the working of the administrative setup. The State Government has however stated that it supports Section 19 of the Prevention of Corruption Act, 1988 which provides for prior sanction from competent authority for initiating prosecution against a delinquent public servant as it protects the public servant from malicious complaints.

8. The Joint Resident Commissioner, Government of Madhya Pradesh stated that the Government is in complete agreement with all the clauses of the Bill.

9. Verbatim recording of the proceedings was kept.

10. The Committee adjourned at 5.11 P.M. to meet again at 4.00 p.m. on the 10th March, 2016.

VI

SIXTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 4.00 P.M. on Thursday, the 10th March, 2016 in Room No. 62, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Mani Shankar Aiyar
4. Shri Bhubaneswar Kalita
5. Shri A. Navaneethakrishnan
6. Shri Naresh Gujral
7. Shri D. Raja
8. Shri Tiruchi Siva

SECRETARIAT

Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

WITNESSES

- I. Representative of State Government of Sikkim
Shri Alok Kumar Srivastava, Chief Secretary
- II. Representatives of State Government of Mizoram
 1. Shri Lalmalsawma, Chief Secretary
 2. Dr. Ranbir Singh, Resident Commissioner; and
 3. Shri Ajai Kashyap, Director, ACB
- III. Representatives of State Government of Manipur
 1. Shri O. Nabakishore, Chief Secretary
 2. Shri Th. Kamini Kumar Singh, Additional Secretary (Law)
- IV. Representatives of State Government of Assam
 1. Smt. T.Y. Das, Additional Chief Secretary
 2. Dr. R. Chandra Nathan, Additional General of Police
 3. Ms. L.S. Changsan, Commissioner and Secretary
- V. Representatives of State Government of Tripura
 1. Shri Pravin Srivastava, Chief Resident Commissioner
 2. Dr. Rakesh Sarwal, Principal Resident Commissioner

VI. Representative of State Government of Nagaland

Shri Thomas Thailu, OSD

Department of Personnel & Training

Shri Rakesh Kumar, Director

Department of Legal Affairs

Dr. Reeta Vasistha, Additional Secretary; and

Shri R. Sreenivas, Addl. L.C.

Department of Legal Affairs

Shri R.S. Verma, Deputy Legal Counsel; and

Dr. R.J.R. Kashibhatla, DLA

2. The Chairman welcomed the Members of the Committee and the representatives of the State Governments of North-Eastern States to the meeting of the Committee. The Chairman requested the Governments to dwell upon the new Sections 17A and 18A proposed through the official amendments by the Government in 2015.

3. The Chief Secretary, Government of Sikkim pointed out that the State of Sikkim had a Lokayukta as well as the Office of the Director (Vigilance). The State has four Courts which have been designated as Special Courts under the Prevention of Corruption Act, 1988 to try corruption related cases. He stated that the Government was opposed to the proposed new Section 17A and opined that the provisions in Section 197 of CrPC would be appropriate. Regarding the inclusion of professionals like valuers, chartered accountants, etc. under the definition of 'public servant' when they tender advice to the Government on consideration, that Government had supported the move. The Government had also supported the inclusion of principals, teachers, members of management committees under the Prevention of Corruption Act. He also stated that bribe-giver and bribe-taker might not be treated on an equal footing as that would lead to victimization of ordinary citizens by public servants. With regard to definition of 'undue advantage' under the Act, the Government opined that the definition appeared to be appropriate but might lead to victimization of public servants as well. With respect to the amendments to Section 13 of the Act, the Government stated that the existing provisions were better suited and inclusion of words like 'intentionally' would put extra burden on the investigative agencies. The Government also supported the timeline of two years extendable upto four years for the completion of trials by the Courts.

4. The Chief Secretary, Government of Mizoram stated that the Government supported the Clauses of the Bill. On the issue of criminalization of bribe-giving, that Government had completely supported the provisions of the Bill as those happened to be in line with Article 14 of the United Nations Conventions Against Corruption. However, the Government did not support the proposed new Section 17A as the protection under Section 19 of the Prevention of Corruption Act, 1988 and Section 197 of CrPC appeared to be sufficient to protect honest civil servants.

5. The Chief Secretary, Government of Manipur stated that the State of Manipur had a unique Manipur Public Servants' Personal Liability Act, 2006 which mandated that the creation of any unauthorized liability by public servant on the State Government, had to be paid by the Public Servant himself/herself. He also added that the Manipur Lokayukta Act, 2014 was yet to be operationalised. That Government had also suggested that a distinction be made between bribe-giver and a whistleblower, who might not be the same person always, and ensured that Whistleblowers needed to be given adequate protection and were, at the same breath, hold to be accountable for filing frivolous complaints.

6. The Additional Chief Secretary, Government of Assam stated that the Government of Assam agreed with the provisions of the Bill but had suggested that the immunity provided

to bribe givers under Section 24 of the Prevention of Corruption Act, 1988 might be retained. The Government felt that the amendments to Section 8, which criminalizes bribe-giving, would deter the investigations against corrupt officials in the long run as collection of evidence would become difficult. With respect to substitution of Section 13(1)(b), she stated that the introduction of the word 'intentional' happened to be fraught with danger and that the word needed to be defined with more precision. Further, the Government felt that the Section 13(1) (d) (ii) of the Principle Act might be retained to cover offences related to misuse of public office for personal gain or other gains.

7. The Chief Resident Commissioner, Government of Tripura requested for extension of time for three weeks to submit the views of the State Government on the Bill. The Chairman granted three weeks time.

8. The Officer on Special Duty, Government of Nagaland stated that the Government of Nagaland supported the Bill.

9. The Chairman directed the State Governments to submit their written views on the Bill within two weeks time.

10. Verbatim recording of the proceedings was kept.

11. The Committee adjourned at 5.42 P.M. to meet again at 11.00 A.M. on the 1st April, 2016.

VII

SEVENTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 11.00 A.M. on Friday, the 1st April, 2016 in Room No. 53, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Dr. Chandan Mitra
3. Shri Bhupender Yadav
4. Shri Shantaram Naik
5. Shri Naresh Agrawal
6. Shri K.C. Tyagi
7. Shri Sukhendu Sekhar Roy
8. Shri A. Navaneethakrishnan
9. Shri K.N. Balagopal
10. Shri Devender Goud T
11. Shri Sanjay Raut
12. Shri D. Raja
13. Shri Hishey Lachungpa
14. Shri Tiruchi Siva

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

WITNESSES

I. Confederation of Indian Industry (CII)

1. Ms. Pallavi Shroff, Regional Managing Partner, National Practice Head, Dispute Resolution, Shardul Amarchand Mangaldas & Co.
2. Ms. Dipti Mehta, Partner, Mehta & Mehta
3. Shri Prashant Choksi, Group Head, Compliance, Legal & Company Secretary, JM Financial Limited
4. Shri Babu Khan, Senior Director, CII
5. Shri Shreeram Lakshman, Consultant CII, Public Policy

II. Federation of Indian Chambers of Commerce & Industry (FICCI)

1. Smt. Vijaya Sampath, Chairperson Corporate Law
2. Miss Nidhi Tomar

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- III. PHD Chamber of Commerce and Industry
1. Shri Saurabh Sanyal, Secretary General
 2. Shri Vivek Seigell, Director
 3. Ms. Surbhi Sharma, Senior Research Officer
- IV. PRS Legislative Research
1. Dr. M.R. Madhavan, President
 2. Dr. Mandira Kala, Research Head
 3. Ms. Prianka Rao, Senior, Analyst
- V. The Institute of Company Secretaries of India
1. CS Mamta Binani, President
 2. CS Vineet K. Chaudhary, Council Member
 3. Shri Sameer Chaudhary
 4. CS Alka Kapoor, Joint Secretary
 5. CS Banu Dandona, Joint Director
 6. Ms. Hema Babbar, Assistant Director
- VI. Institute of Chartered Accountants of India
1. CA. M. Devaraja Reddy, President
 2. CA. Nilesh Shivji Vikamsey, Vice-President
 3. CA. Naveen ND Gupta, Central Council Member & Chairman, Committee on Economic; TM Commercial Law & WTO
 4. CA. Mangesh Pandurang Kinare, Central Council Member & Vice-Chairman, Committee on Economic, Commercial Law & WTO
 5. Shri V. Sagar, Secretary
 6. Shri Rakesh Sehgal, Director
 7. CA. Kuldeep Vashist, Assistant Secretary
- VII. National Campaign for People's Right to Information (NCPRI)
1. Ms. Anjali Bhardwaj, Co Convener
 2. Shri Shekhar Singh, Co Convener
 3. Ms. Amrita Johri, Co Convener
- VIII. Indian Civil and Administrative Service (Central) Association
- Shri Sanjay Bhoosredy, Secretary
- IX. Confederation of Central Government Gazetted Officers' Organisations
1. Shri Raman Kumar Sharma, Chairman
 2. Shri P.R. Charanbabu, Vice Chairman
 3. Shri S. Mohan, Secretary General
 4. Shri Bhaskar Bhattacharya, Addl. Secy. General
 5. Shri Mahesh Kumar, Jt. Secy

X. Confederation of Civil Service Associations

1. Shri Jayant Mishra, IRS, Convenor
2. Ms. Subhra Agarwal, Member
3. Shri Sajay Swankar Singh, Member
4. Shri Sandeep Sarkar, Member
5. Shri Pawan Kumar Singh, Member

XI. CSSS Gazetted Officers' Association

Shri R.S. Rawat, Convener

A. Department of Personnel and Training

1. Shri Jishnu Barua, Joint Secretary
2. Shri U.G. Mulchandaney, Under Secretary

B. Ministry of Law and Justice

Department of Legal Affairs

Shri R.S. Verma, Deputy Legal Adviser

Legislative Department

1. Ms. Reeta Vasistha, Additional Secretary
2. Shri R Sreenivas, A.L.C.

2. The Chairman welcomed the Members and the representatives of the Non-Government Organisations (NGOs), professional bodies and Central Government Employees' Associations to the meeting of the Committee. He then requested the representatives to offer their views on the Bill. He requested the representatives of professional bodies to submit their views as to whether those professionals like Lawyers, Chartered Accountants and Company Secretaries who give advice on consideration from public purse need to be included under the definition of 'Public Servant' under the P.C. Act 1988.

Deposition of Confederation of Indian Industries (CII)

3.0. The Regional Managing Partner, Confederation of Indian Industries (CII) stated that the definition of 'public duty' in the parent Act and the new terminologies of 'public function or activity' were not in consonance with each other and might be thoroughly examined. She also stated that the definitions of new terms proposed to be inserted in the P.C. Act like 'relevant expectation' happened to be vague and were open to judicial interpretation.

3.1. With respect to criminalization of bribe-giving, she stated that the provisions under the proposed Section 8 were in line with the obligations of our nation under the United Nations Convention Against Corruption (UNCAC). However, a provision might be made under the Section to protect whistleblowers. She pointed out that such provisions even existed in developed countries with very strict anti-corruption laws. She added that the presumption of offence on the part of the management in corporate corruption cases would be against the basic canons of criminal jurisprudence. She submitted that in proposed Section 10, the word 'neglect' might be substituted with the words 'wilful neglect' so that concept of *mens rea* could be attributable to the management of commercial organisations.

3.2. With respect to the proposed amendments to Section 13 of the Act, she submitted that inclusion of the words 'illicit enrichment' seeks to incorporate concept of *mens rea* in the above Section which could be misused by public servants. She was of the opinion that in cases of disproportionate assets, there should be no need of establishing *mens rea* of the accused public servant.

3.3. On the issue of inclusion of professionals, especially lawyers, under the definition of 'public servant', it was submitted that lawyers are governed under the Advocates Act and the Code of Ethics prescribed by the Bar Council. Further, an advice given by an advocate to a client are covered under the privilege conferred by Sections 127, 128 and 129 of Indian Penal Code, 1860.

Deposition of Federation of Indian Chambers of Commerce and Industry (FICCI)

4.0. The Chairperson of Corporate Law in Federation of Indian Chambers of Commerce and Industry (FICCI) while supporting the points raised by CII stated that question of vicarious liability of senior management of commercial organisations might not be fixed for corruption by its employees or agents unless there was consent or connivance of the former in the act of corruption. She welcomed the proposed amendments to Section 19 of the Act and insertion of new Section 17A in the Act, which according to her, were necessary to protect honest civil servants. With respect to Section 17A, she stated that the provision would be a welcome addition to the system of check and balance as there happened to be possibility of conflict of interest if the concerned Government is vested with the power to grant permission for prosecution.

4.1. While concurring with the opinion of CII on the issue of inclusion of professional under the definition of 'public servant' when they tender advice to the Government. She averred that if the professionals tender wrong advice, they could be held liable under their respective Acts or the Code of Ethics of that particular profession but should not be covered under the Prevention of Corruption Act, 1988. She suggested that only cooperative societies, trusts and NGOs who receive financial aid above a particular threshold, say Rs. 10 Lakhs, from the Government, must be included under Section 2 of the P.C. Act.

4.2. On the issue of criminalizing bribe giving, she averred that the protection was available to the bribe-giver if that person informs the police or probe agencies before paying the bribe or part thereof. She felt that given the situation in the country, the protection should be extended to cases where the bribe-giver informs the agencies immediately after paying the bribe or part thereof. While supporting the proposed Section 18A relating to attachment and forfeiture of property, she suggested the reduction of the maximum time frame to two years plus another six months instead of four years. She suggested that the time frame of ninety days might be adhered to for filing of chargesheet by the police.

Deposition of PHD Chamber of Commerce and Industry

5. Secretary General, PHD Chamber of Commerce and Industry supported the submissions made by CII and FICCI. He also did not support the presumption of offence on the part of the management of a commercial organisation involved in a case of bribing a public servant. Further, he supported giving protection to the whistleblowers as that would expose more corruption cases.

Deposition of PRS Legislative Research

6.0. The President, PRS Legislative Research suggested that a differentiation should be made between collusive bribery and coercive bribery. He further submitted that the protection under Section 24 might be retained to protect the bribe giver if he reports the same to the relevant authorities after making the payment of bribes. With respect to Section 7(3) which provides protection to bribe receiver if he carries out his duty honestly, he stated that the Section has potential to be misused by delinquent public servants. With respect to the proposed new Section 17A, he was of the view that public servant would get double protection. He also referred to the striking down of Section 6A of Delhi Special Police Establishment Act, 1946 and stated that the Court had observed that the provision thwarted the conduct of an independent and unhampered investigation process.

6.1. With regard to possession of disproportionate assets by a public servant, it was submitted that the amendments proposed by the Government were better suited than the provision of the original Bill and thus might be carried forward.

Deposition of Institute of Company Secretaries (ICSI)

7. The President, Institute of Company Secretaries (ICSI) supported the retention of Section 24 of the Act. She added that there should be provisions for dealing with habitual bribe-givers as well. She also suggested that intermediaries in the chain of bribery should also be included under the Clause. She also suggested that the trials should be held *in camera* and media trial by press should be stopped to protect civil servants. On the issue of criminal liability of management/ Board of Directors of a commercial organisation involved in bribing a public servant, she reiterated the stand taken by CII and FICCI and suggested that Independent Directors must not be made accountable in any case.

Deposition of Institute of Chartered Accountant of India (ICAI)

8.0. The Chairman, Economic and Commercial, Institute of Chartered Accountants of India in his submission stated that in the proposed Section 9 (3) (a), the definition of commercial organisations should include such organisations which are incorporated outside India but carry out business directly or indirectly in India through a permanent establishment. On the issue of definition of 'public servant' in the Bill, he submitted that the term 'public interest entities' must be used to cover PPP projects and the Board members including the independent members of such a Company. He stated that Section 24 of the Act needs to be retained in order to protect the whistleblowers. He also advocated for differentiating between coercive and collusive bribery and inclusion of *mens rea* for the bribe giver as well. He submitted that there happened to be certain entities like clubs and professional bodies which neither charitable organization nor engaged in any business. The words 'commercial organizations' might be substituted by 'entity' and the word 'business' might be substituted with 'activity' in proposed Sections 9 and 10 of the Act to protect professional bodies and charitable organizations.

8.1. He submitted that there happened to be certain entities like clubs and professional bodies which neither charitable organisations nor engaged in any business. The words 'Commercial Organisation' might be substituted by 'entity' and the word 'business' might be substituted with 'activity' in proposed Sections 9 and 10 of the Act to protect professional bodies and charitable organisations. He suggested that adequate procedure must be clearly defined which might include displaying signboards at the workplace which should clearly spell out the anti-corruption guidelines of the organisation.

8.2. On the issue of inclusion of professionals like Chartered Accountants in the definition of public servant under the Act, he stated that Chartered Accountants were covered under the Chartered Accountants Act, 1949 and suggested that professionals should not be included under the definition of public servants when tendering advice/service to the Government.

National Campaign for People's Right to Information (NCPRI)

9.0. The Co-Convenor, National Campaign for People's Right to Information (NCPRI) opposed the criminalization of bribe-giving when it happened to be coercive in nature. She also supported the retention of Section 24 of the Act and suggested that people who turn approvers in corruption related cases might also be given protection from criminal liability but the illegal gains the person received might be returned to the State.

9.1. With respect to corruption by commercial organisation, she welcomed the amendments to Sections 9 and 10 but stated that the Clause is loosely worded which would lead to unnecessary litigation and delays. She also opposed the proviso to the proposed Section 9 (1) and said that the management must prove that they did not abet the offence. She further suggested that PPP projects and private bodies performing public functions might also be included in the definition. She also opposed the need for obtaining prior sanction for launching an inquiry or investigation against a public servant from the Lokpal or Lokayukta of a State. She pointed out that the Lokpal was yet to be appointed and several

States had not appointed their Lokayuktas. Further, she pointed out that Lokayuktas in some States have only a recommendatory role and did not have power to grant sanction for prosecution.

(Some of the witnesses withdrew at this stage)

Deposition of Honorary Secretary, Indian Civil and Administrative Service

10. The Honorary Secretary, Indian Civil and Administrative Service (Central) Association, requested for grant of time to submit his Association's views on the Bill. The Chairman granted one week's time to submit the views.

Deposition of Convener, Confederation of Civil Service Associations

11.0. The Convener, Confederation of Civil Service Associations supported the criminalization of bribe giving. However, he suggested that some relief might be provided to bribe-givers in petty cases of coercive bribery in which they paid a bribe to avail an essential service. While supporting the protection provided to bribe givers under Clause 8(2), he stated that such a protection might also be extended to public servants so that traps might be set for collusive bribe-givers. He also suggested that a stringent punishment might be prescribed in false complaint cases and the public servant should be compensated for the mental agony and loss of reputation.

11.1. He also supported the proposed new Section 17A and said that it was a necessary provision to protect honest public servants. However, in case of grant of sanction for launching of prosecution against a public servant, he averred that the power should be with the Disciplinary Authority. Further, he submitted that the attachment of property acquired from corrupt means must be carried out as per the provisions of Prevention of Money Laundering Act, 2002 by the Enforcement Directorate. He also supported the inclusion of professionals and pointed they were already covered under the Act *ipso facto* due to the definition of public servant under the Act which includes any person who is remunerated by the Government for performance of a public duty.

11.2. With respect to criminalization of commercial organisations engaging in corrupt practices, he suggested that the provisions of Foreign Corrupt Practices Act (FCPA) of the USA should be studied and imported into the Indian jurisprudence. He also supported inclusion of principals and teachers of colleges, universities and deemed universities under the definition of public servant. While supporting the provision of the Bill regarding the time bound completion of trial, he submitted that a time frame should also be prescribed for filing of chargesheet and the composite time for filing of chargesheet and completion of trial should be four years. With respect to the proposed Section 7(1) (a) he suggested that some provisions needed to be reworded to protect public servants when they take *bona fide* decisions based on any wrong advice tendered by a junior employee, who might have taken a bribe to tender such advice. Similarly, the words 'attempts to obtain' might be deleted as it happened to be very wide and prone to misuse.

Deposition of Confederation of Central Government Gazetted Officers

12. The Vice Chairman, Confederation of Central Government Gazetted Officers supported the views expressed by the Confederation of Civil Service Associations. He also suggested that the power to grant sanction for prosecution against a public servant should be rest with the disciplinary authority. He referred to the Seventh Pay Commission Report which criticised the fact that bureaucrats are targeted even for *bona fide* decisions made by them and supported the criminalization of bribe-giving as well.

Deposition of CSSS Gazetted Officers' Association

13. The Convener of CSSS Gazetted Officers' Association stated that the Bill lacked adequate provisions for whistle blowing by public servants themselves especially against their senior officers who write their Annual Performance Appraisal Reports (APARs). The

Convener requested the Committee to grant them a week's time submit their views in writing to the Secretariat which was granted by the Chairman.

14. Verbatim recording of the proceedings was kept.
15. The Committee decided to meet next at 11.00 A.M. on the 12th April, 2016.
16. The Committee adjourned at 1.47 P.M.

VIII**EIGHTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 11.00 A.M. on Tuesday, the 12th April, 2016 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Shantaram Naik
4. Shri Bhubaneshwar Kalita
5. Shri Naresh Agrawal
6. Shri K.C. Tyagi
7. Shri A. Navaneethakrishnan
8. Shri Devender Goud T
9. Shri D. Raja
10. Shri Rajeev Chandrasekhar

SECRETARIAT

- Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

OFFICIAL WITNESSES**A. Department of Personnel and Training**

1. Shri Sanjay Kothari, Secretary
2. Shri T. Jacob, Additional Secretary
3. Shri Jishnu Barua, Joint Secretary
4. Shri Rakesh Kumar, Director
5. Shri Kamal Kishore, Under Secretary
6. Shri U.G. Mulchandaney, Under Secretary

B. Ministry of Law and Justice**Department of Legal Affairs**

1. Shri Ramayan Yadav, Joint Secretary & LA
2. Shri R.S. Verma, Deputy Legal Adviser

Legislative Department

1. Dr. G. Narayana Raju, Secretary (LD)
2. Ms. Reeta Vasistha, Additional Secretary
3. Shri R Sreenivas, A.L.C.

2. The Chairman welcomed the Members and the officials of the Ministries to the meeting of the Committee and informed them that the Committee would take up the Clause-by-Clause consideration of the Bill during the meeting. The Chairman requested the Secretary, Department of Personnel and Training (DoPT) to present the Department's final views on the Clauses of the Bill and amendments to the Bill, if any.

3. The Committee then took up clause by clause consideration of the Bill. While considering the clause of the Bill, the Committee took into account the proposed amendment by the Government in 2015 and also in 2016. The proposed amendment *inter-alia* seeks to insert a few more clauses which may, if agreed to would have the effect of renumbering of the clauses in the Bill. The Committee considered the Clauses of the Bill accordingly.

4. The Secretary apprised that definition of a new terms -'undue advantage' was proposed in Section 2 of the Prevention of Corruption Act, 1988. Members expressed their reservations on the wide import of the term and suggested that the word might be replaced with the term 'gratification'. The Secretary, DoPT informed the Committee that the word had been in use in international treaties and conventions, specifically in the United Nations Convention Against Corruption (UNCAC) and the meaning of the term is well defined and understood. The Committee directed the Department to examine the suggestion of the Committee and give its comments on the issue.

5. Amendment to Section 4 of the Act had been proposed by the Government to fix time limit of two years extendable to four years for the completion of trial of corruption cases by the Courts. Some members opined that outer limit of the trial could not be fixed in view of the judgement of the Apex Court in Ramachandra Rao V/s State of Karnataka (2012 9 SCC 430). They raised doubts on the fate of the trial after the expiration of the stipulated time frame of four years and whether it would lead to automatic acquittal of the accused. The Secretary, DoPT stated that the case would go on until completion and the accused would not be acquitted on these grounds. The onus of time bound completion of trial would be on the judge and the fact that he would have to state the reasons of delay in writing, which would act as a natural check on the trial. The Joint Secretary, Department of Legal Affairs added that as per the general provisions of the CrPC the trial would continue and the accused would not be acquitted. The Committee directed the Department of Legal Affairs to prepare a note on the issue and submit it for the consideration of the Committee.

6.0 It was pointed out that the term 'improper function' in Section 7 of the Act might include 'willful negligence' or 'omission' explicitly. The Committee sought written views of DoPT on the issue.

6.1. While discussing on proposed new Sections -7,8, 9 and 10 in the Principal Act, Members reiterated their objection to the use of the word 'undue advantage' instead of the word 'illegal gratification' as the said provision could be misused to harass honest civil servants by the police. The Members opined that the use of 'undue advantage' would restrict the working of honest civil servants. The Committee agreed with other aspects of the proposed amendments to Section 7 of the Principal Act. The Secretary DoPT submitted that the amendments to Section 7(3) of the Bill provide enough protection to *bona fide* performance of public activity by honest public servants. The doubt was expressed on the use of double negative used in the new Section 7(3) to provide protection to bribe receiver. After some deliberation, the Committee agreed to accept it as the word 'dishonestly' is defined in Section 24 of the Indian Penal Code. The Committee agreed to the omission of Section 11 of principal Act.

7. With respect to proposed amendments to Section 9, the Members stated that under the definition Clause under the proposed new Section 9 (3), the word 'charitable service' should be removed as charitable organisations happened to be non-profit making entities.

8. In the proposed Section 13, the Members felt that the quantum of fine must be prescribed by the Act itself and it might not be left to the Courts to decide the fine needed to be relatable to quantum of gratification of misappropriation. Further, they suggested that the

amount or property involved in the transaction might be confiscated. The Committee agreed to proposed Amendment of the Section 13(1) (a) of the Principal Act. The Committee also agreed to the Amendment of the Section 13(1) (b) of Principal Act as proposed by the Government.

9. Verbatim recording of the proceedings was kept.
10. The Committee decided to meet next at 11.00 A.M. on the 13th April, 2016.
11. The Committee adjourned at 1.22 P.M.

IX**NINTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 11.00 A.M. on Wednesday, the 13th April, 2016 in Room No. 139, First Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Shantaram Naik
4. Shri Bhubaneshwar Kalita
5. Shri Naresh Agrawal
6. Shri K.C. Tyagi
7. Shri A. Navaneethakrishnan
8. Shri Devender Goud T
9. Shri D. Raja

SECRETARIAT

- Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

OFFICIAL WITNESSES**A. Department of Personnel and Training**

1. Shri Sanjay Kothari, Secretary
2. Shri Jishnu Barua, Joint Secretary
3. Shri Rakesh Kumar, Director
4. Ms Meera Mohanty, Deputy Secretary
5. Shri U.G. Mulchandaney, Under Secretary

B. Ministry of Law and Justice**Department of Legal Affairs**

1. Shri Ramayan Yadav, Joint Secretary & LA
2. Shri R.S. Verma, Deputy Legal Adviser

Legislative Department

1. Ms. Reeta Vasistha, Additional Secretary
2. Shri R Sreenivas, A.L.C.

2. At the outset, the Chairman welcomed the Members of the Committee and Officers of Ministries of Personnel, Public Grievances and Pension and Law and Justice to

the sitting. The Committee, then resumed Clause-by-Clause consideration of the Prevention of Corruption (Amendment) Bill, 2013 which was commenced in its last sitting held on 12th April, 2016.

3. It was felt by the Committee that the inclusion of the terms “charitable services” under proposed Section 9 (3) of the PC Act would hold the office bearers of any charitable organization liable for the act of corruption by its employees. Since charitable organizations are not commercial organization, these entities should not be brought under the purview of the PC Act. The Committee after deliberations agreed to remove the terms “charitable services” from the proposed Section 9 (3). The Committee adopted Clauses 9 and 10 with the amendment proposed.

4. The Committee again discussed the issue use of the words ‘undue advantage’ in the definition Clause of the Bill. An apprehension was expressed that the Police might misuse the PC Act to harass any citizen as the purport and import of the terms appears to be very wide as compared to the terms “illegal gratification” used in the PC Act. In that context, the interpretation of the apex court of those terms was sought for from the Ministries concerned. The Secretary, DoPT explained that the terms “undue advantage” have been used in UNCAC which happened to be popular in international arena and suggested that the words might be used in the amended PC Act.

5. To the query of the Committee about the words – ‘person expecting to be public servant’, the DoPT, Secretary clarified that a person who has been selected to a post but yet to join the Office would be a person expecting to be a public servant and punishment to that person would be equal to the punishment prescribed for public servant under the PC Act. But any person not expecting to be in public office, solicits or receives/accepts undue advantage, would be punishable for cheating under IPC not under PC Act. He added that these terms were used in the PC Act, 1988 under Section 7. The Committee then directed the DoPT and Ministry of Law and Justice to have a relook on the use of 'undue advantage' and 'expecting to be a public servant in the Bill. Subject to this the Committee agreed to the amendment, as proposed by Government in reference to Sections 7, 8 and 9 of the Principal Act.

6. The Committee thereafter considered the amendment of Section 17 by inserting a new section 17A as proposed by the Government in 2016. The Secretary, DoPT submitted that competent authority would be sanctioning authority for launching investigation or inquiry by Police or any probe agency which had been necessitated after Section 6A of the DSPE Act, 1946 being quashed by the apex court in 2014. The Committee agreed to the Governments proposed amendment.

7. For attachment and confiscation of property of public servant under the PC Act, the provisions of Prevention of Money Laundering Act, 2010 could be invoked. In the event of any gap, the provisions of Criminal Law Amendment Ordinance, 1944 would be invoked for the purpose. A new Section 18A had been proposed for insertion in the PC Act which was endorsed by the Committee.

8. The Committee also agreed the remaining clauses of the Bill along with the amendment proposed by the Government. The Committee then decided that it would need more time to complete its exercise of clause-by-clause consideration and desired to hold atleast two more meetings before it finalises its views on the Bill.

9. Verbatim recording of the proceedings was kept.

10. The Committee decided to meet next at 5.30 P.M. on the 26th April, 2016.

11. The Committee adjourned at 12.35 P.M.

X

TENTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 5.30 P.M. on Tuesday, the 26th April, 2016 in Room No. 63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Shri Bhupender Yadav
3. Shri Shantaram Naik
4. Shri Bhubaneshwar Kalita
5. Shri A. Navaneethakrishnan
6. Shri Devender Goud T
7. Shri Praful Patel
8. Shri Sanjay Raut
9. Shri D. Raja
10. Shri Rajeev Chandrasekhar

SECRETARIAT

- Shri K. P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

OFFICIAL WITNESSES

- A. Department of Personnel and Training
1. Shri Sanjay Kothari, Secretary
 2. Shri Jishnu Barua, Joint Secretary
 3. Shri Rakesh Kumar, Director
 4. Shri U.G. Mulchandaney, Under Secretary
- B. Ministry of Law and Justice
- Legislative Department
1. Dr. Reeta Vasistha, Additional Secretary
 2. Shri R Sreenivas, A.L.C.

2. At the outset, the Chairman welcomed the Members of the Committee and Officers of Ministries of Personnel, Public Grievances and Pension and Law and Justice to the sitting. The Committee then took up for consideration the revised Bill submitted by the Department of Personnel and Training (DoPT) based on the deliberation of the Committee during the clause-by-clause consideration of the Bill held on 12th and 13th April, 2016.

3. On the issue of the use of the words 'expecting to be a public servant' in the Clause seeking to amend Section 7 of the Act, the Committee felt that the definition is very wide and will lead to unnecessary harassment of public servants. The Members felt that the words should be omitted wherever it is mentioned in the Act. The Members opined that a person becomes a public servant upon entering the public office and not prior to that.

4. The Secretary, DoPT stated that the words 'charitable services' in the definition clause of the proposed amendments to Section 9 (3) have been omitted on the recommendation of the Committee. It was further suggested by the Members that the words 'commercial organisation' in the proposed amendments to Section 9 be replaced with 'any organisations' so that bribe giving by even NGOs can be covered under the Act. Some Members also expressed their reservation on the presumption of offence on the part of the management of a commercial organisation. Further, the Members felt that since the offence under the Act is a cognizable, non-bailable offence, the provisions can be used to victimize commercial organizations and their managements and would scare away foreign investors. The Committee felt that the offence for bribe-givers might be a non-cognizable offence and for bribe-takers, it might remain as a cognizable offence. The bribe-giver might be punished only once the guilt is established beyond doubt. Some members were of the view the Whistle Blowers Protection (Amendment) Bill, 2015 should be examined by this Committee as a lot of commonalities existed between these two legislations.

5. The Committee directed the Department of Personnel and Training to submit a revised Bill, incorporating the suggestions made by the Members during the meeting, for the consideration of the Committee.

(The witnesses then withdrew)

6. The Committee then considered the issue of extension of time for submission of the Report. After gathering the views of Members, the Committee decided to seek further extension of time till the last day of the first week of the next Session and authorised the Chairman and in his absence, Shri Bhupender Yadav to move the motion in the house to that effect.

7. Verbatim recording of the proceedings was kept.

8. The Committee adjourned at 7.01 P.M.

XI**ELEVENTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 3.00 P.M. on Tuesday, the 7th June, 2016 in Committee Room C, Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Anil Madhav Dave — Chairman

MEMBERS

2. Dr. Chandan Mitra
3. Shri Bhupender Yadav
4. Shri Shantaram Naik
5. Shri Bhubaneshwar Kalita
6. Shri K.C. Tyagi
7. Shri A. Navaneethakrishnan
8. Shri Satish Chandra Misra
9. Shri Praful Patel
10. Shri Sanjay Raut
11. Shri D. Raja
12. Shri Rajeev Chandrasekhar
13. Shri Avinash Pande
14. Shri Naresh Gujral

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

NON-OFFICIAL WITNESS

1. Shri Ashok Kapur
2. Dr. L.S. Chaudhury
3. Ms Guninder Gill

OFFICIAL WITNESSES

- A. Department of Personnel and Training

Shri Rakesh Kumar, Director

- B. Ministry of Law and Justice

Legislative Department

1. Shri Udaya Kumara, Joint Secretary and Legislative Counsel
2. Shri Diwakar Singh, Additional Legislative Counsel.

2. At the outset, the Chairman welcomed the Members of the Committee and Officers of Ministries of Personnel, Public Grievances and Pension and Law and Justice to the sitting. The Committee then held internal discussions on the provisions of the revised Bill as submitted

by the Department of Personnel and Training for the perusal of the Committee. Some Members raised concern over the new proposed Section 10 which makes the management of a commercial entity criminally liable if its employees or agents bribe or attempt to bribe a public servant with the consent and connivance of the management in the act. It was felt that making it a cognizable offence for the management for the acts of its employees would make the management liable to be arrested immediately, subjecting them to unnecessary harassment. It was also felt that in that case, the burden of proof would also shift to the managers of the organization who have been arrested. The Chairman informed the Members that the Ministry of Law and Justice has been asked to give its opinion.

(The witnesses then arrived)

3. The Chairman welcomed the non-official witnesses to the meeting and requested them to present their views on the Bill in a brief manner.

4. The witness briefed the Committee about the history, evolution and need of the Prevention of Corruption Act, 1988. He felt that the terms 'improperly' and 'other advantage' used in the Bill happened to be vague and having a wide import. Those could be misused by corrupt officers. He further stated that the provisions on the Bill would affect the functioning of field level officers as they are often required to canvass with private entities in order to get donations for a public cause. He also stated that 'relevant expectation' as used in the Bill is also vague. He felt that the proposed Section 10 appeared to be harsh and that it would not be right to hold a Director of a company criminally liable for the indiscretion of an employee or agent of the company. He submitted that Chapter IVA, pertaining to attachment and forfeiture of property, needed to be omitted. He opined that the Clause allows an investigation officer to attach a property based on the basis of an affidavit, could be misused by an officer. He felt that an affidavit should not be considered as evidence to attach the property. With respect to determination of cost of assessment provided under Clause 18L, the witness submitted that the Bill does not prescribe the method of calculation of the cost. He also submitted that the amendments seek to extend the jurisdiction of the Central Vigilance Commission before the filing of chargesheet, the CVC needs to be consulted by the investigation agency. He also felt that the provisions relating to seeking the permission of the Government to launch investigation into corrupt acts committed by a public servant are inappropriate and may not stand judicial scrutiny.

5. The second witness reiterated the points raised on the proposed Section 10 of the Bill. He submitted that the concept of vicarious liability, which is confined to civil laws alone, is being introduced into criminal law by the Section. He opined that this would affect the investment climate in the country. With respect to the insertion of new Chapter IVA, he submitted that method of attachment of property is not appropriate. He stated that the provisions allow for attachment of property based only on an affidavit by an investigating officer. He felt that this is a harsh provision. He suggested that the provisions of Prevention of Money Laundering Act, 2002, which are more suitable for attachment of property, may be incorporated in the Bill.

6. The Chairman directed the witnesses to submit alternate formulations for the amendments suggested by them within a week's time.

(The witnesses then withdrew)

7. Some Members of the Committee sought clarifications from the DoPT on whether public servants as defined in the Act also covers judicial officers. Chairman directed them to give written replies.

8. Verbatim recording of the proceedings was kept.

9. The Committee adjourned at 4.21 P.M.

XII**TWELFTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 3.00 P.M. on Thursday, the 21st July, 2016 in Room No.63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairman

MEMBERS

2. Shri Shantaram Naik
3. Shri Bhubaneshwar Kalita
4. Shri Naresh Agrawal
5. Shri Anubhav Mohanty
6. Shri Devender Goud T.
7. Shri Rajeev Chandrasekhar
8. Shri Tiruchi Siva
9. Shri C.P. Narayanan
10. Shri Dilipbhai Pandya
11. Shri Pramod Tiwari
12. Shri A. Navaneethakrishnan
13. Shri Harivansh

SECRETARIAT

- Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

NON-OFFICIAL WITNESSES

Dr. Subramanian Swamy, MP, Rajya Sabha

OFFICIAL WITNESSES

- A. Department of Personnel and Training
 1. Shri Jishnu Barua, Joint Secretary
 2. Shri Rakesh Kumar, Director.
- B. Ministry of Law and Justice Legislative Department
 1. Dr. Reeta Vasishta, Additional Secretary
 2. Shri Udaya Kumara, Joint Secretary and Legislative Counsel
 3. Shri R. Sreenivas, Additional Legislative Counsel.

Department of Legal Affairs

1. Shri S.R. Mishra, Joint Secretary
2. Shri R.S. Verma, Deputy Legal Advisor

2. At the outset, the Chairman welcomed the Members of the Committee, the non-official witness and the officials of the Department of Personnel and Training, Legislative Department, Department of Legal Affairs. The Chairman requested the witness to present his views on the provisions of the Bill.

3. The non-official witness submitted that Section 13(1) (d) (iii) of the Prevention of Corruption Act, 1988 covers new species of crime related to corruption which was not contemplated under Prevention of Corruption Act, 1947. He submitted that the present amendment proposes to alter the said Section to the extent of deleting Section 13(1) (d) (iii) which may not be appropriate to contain corruption where bureaucrats in connivance with politicians causes pecuniary benefit to any private party without having proper consideration of public interest. He cited the three Bench judgement of Delhi High Court in the matter of Runu Ghosh and Others Vs. Central Bureau of Investigation (CBI) wherein the Court had upheld the said Section in 2011 and whose judgement has not yet been overruled by the Supreme Court. On the proposed insertion of Section 17A, he stated that the Section is ultra vires of the Constitution and may be struck down by the Apex Court.

(The witness then withdrew)

4. The Committee decided to seek extension of time upto the last day of the first week of the next session from the House to present the Report on the Bill. The Committee also directed the Department of Personnel and Training (DoPT) to make a presentation on the salient features of the Bill in the first week of August, 2016 for the benefit of the newly appointed Members.

5. Verbatim recording of the proceedings was kept.

6. The Committee adjourned at 3.35 P.M.

XIII**THIRTEENTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 3.00 P.M. on Tuesday, the 2nd August, 2016 in Room No.63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairman

MEMBERS

2. Shri Shantaram Naik
3. Shri Bhubaneshwar Kalita
4. Shri Sukhendu Sekhar Roy
5. Shri Anubhav Mohanty
6. Shri D. Raja
7. Shri Rajeev Chandrasekhar
8. Shri C.P. Narayanan
9. Shri Naresh Gujral
10. Shri Dilipbhai Pandya
11. Shri Shamsher Singh Manhes
12. Shri Praful Patel
13. Shri Harivansh
14. Shri Swapan Dasgupta

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

OFFICIAL WITNESSES**A. Department of Personnel and Training**

1. Shri Bhanu Pratap Sharma, Secretary
2. Shri Jishnu Barua, Joint Secretary
3. Shri Rakesh Kumar, Director.

B. Ministry of Law and Justice**Legislative Department**

1. Dr. Reeta Vasishta, Additional Secretary
2. Shri R. Sreenivas, Additional Legislative Counsel.

Department of Legal Affairs

1. Shri S.R. Mishra, Joint Secretary
2. Shri R.S. Verma, Deputy Legal Advisor

2. At the outset, the Chairman welcomed the Members of the Committee, and the officials of the Department of Personnel and Training, Legislative Department and Department of Legal Affairs. The Chairman requested the Department of Personnel and Training (DoPT) to make their presentation.

3. The Joint Secretary, DoPT, made a presentation highlighting the following salient features of the Bill for the benefit of the newly appointed Members:

- Definition of “undue advantage” – Section 2(d) inserted through official amendments.
- Laying down timeline for speedy trials of corruption cases – Section 4(5) inserted through official amendments.
- Restructuring all provisions of acceptance of bribe by a public servant under single Section – Section 7 substituted by official amendments.
- Criminalization of the act of giving of bribe – Section 8 substituted by official amendments.
- Criminal liability for commercial organisations for bribing public servant. – Section 9 [Rule making power provided under new Section 32] substituted by official amendments.
- Liability of senior management of commercial entity in case of consent or connivance – Section 10 substituted by official amendments.
- Intentional enriching and possession of disproportionate assets proof of such illicit enrichment. – Section 13 amended by the Bill.
- Sanction for initiating investigation against a public servant to be granted by Lokpal or Lokayukta—Section 17A inserted by official amendments.
- Attachment and forfeiture of property – Insertion of new Section 18A by the Bill and subsequent official amendments.
- Extending protection of prior sanction of the Competent Authority of appropriate Government to retired government servant and providing for timeline for granting sanction by that Competent Authority – Section 19 to be amended by the Bill.

4. The Chairman of the Committee informed the Members of the Committee that the Committee has heard the views of 85 witnesses and therefore, recording of more evidences would not be required. He informed that the Committee would now proceed to in-house discussions and requested the Members to submit any suggestions/amendments to the Bill to the Secretariat by 12 noon on 10th August, 2016.

(The witnesses then withdrew)

5. Verbatim recording of the proceedings was kept.

6. The Committee adjourned at 3.41 P.M.

XIV**FOURTEENTH MEETING**

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 4.00 P.M. on Monday, the 8th August, 2016 in Room No.63, First Floor, Parliament House, New Delhi.

PRESENT

Shri Bhupender Yadav — Chairman

MEMBERS

2. Shri Shantaram Naik
3. Shri Bhubaneshwar Kalita
4. Shri Sukhendu Sekhar Roy
5. Shri Devender Goud T.
6. Mir Mohammad Fayaz
7. Shri Rajeev Chandrasekhar
8. Shri C.P. Narayanan
9. Shri Naresh Gujral
10. Shri Dilipbhai Pandya
11. Shri Shamsher Singh Manhes
12. Shri Pramod Tiwari
13. Shri A. Navaneethakrishnan
14. Shri Praful Patel
15. Shri Harivansh
16. Shri Sanjay Raut
17. Shri Swapan Dasgupta

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

OFFICIAL WITNESSES**A. Department of Personnel and Training**

1. Shri Jishnu Barua, Joint Secretary
2. Shri Rakesh Kumar, Director

B. Ministry of Law and Justice Legislative Department

1. Dr. Reeta Vasishta, Additional Secretary
2. Shri R. Sreenivas, Additional Legislative Counsel

Department of Legal Affairs

1. Shri S.R. Mishra, Joint Secretary

2. Shri R.S. Verma, Deputy Legal Advisor

2. At the outset, the Chairman welcomed the Members of the Committee, and the officers of the Department of Personnel and Training, Legislative Department and Department of Legal Affairs. The Chairman informed the Members that the Committee would take up the Clause-by-Clause discussion on the Bill in the meeting.

3. The Committee took up for consideration Clause 2 and decided the incorporation of the following Clause in the Bill:

“In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in Section 2, after clause (c), the following clause shall be inserted, namely:—

(d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation.— For the purposes of this clause,

(a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.”

4. The Committee took up for consideration Clause 3 which seeks to insert new sub-section (4) in Section 4 and decided the incorporation of the following Clause in the Bill:

“In Section 4 of the Principal Act, after sub-section (4), the following sub-Section shall be inserted, namely:—

“(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the case:

Provided that in case, the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years.”

5. The Committee took up for consideration Clause 4 which seeks to substitute Sections 7, 8, 9 and 10. Some Members raised queries relating to the use of the expression ‘agrees to receive’ in the Clause and felt that the Clause may be misused to harass honest public servants. Similarly, some Members felt that use of the words ‘promises to give’ in the proposed Section 8 may lead to undue harassment of general public. Some Members also felt that making the management of a commercial organization liable for criminal prosecution has the potential to vitiate the business atmosphere in the country and affect the ease of doing business in the country. However, the Committee decided that the following Clause be incorporated in the Bill:

“7. Any public servant who,—

(a) obtains or agrees to receive or accepts or attempts to obtain from any person, an undue advantage, intending that in consequence a public duty would be performed improperly or dishonestly either by himself or by another public servant; or

(b) obtains or agrees to receive or accepts or attempts to obtain, an undue advantage as a reward for the improper or dishonest performance (whether by himself or by another public servant) of a public duty; or

(c) performs, or induces another public servant to perform, improperly or dishonestly a public duty in anticipation of or in consequence of agreeing to receive or accept an undue advantage from any person, shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this Section, the obtaining, agreeing to receive, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under this Section.

Explanation 2.—For the purpose of this Section,—

(i) the expressions “obtains” or “agrees to receive” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “agrees to receive” or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or agrees to receive or accepts, or attempts to obtain (or is to agree to receive, or accept or attempt to obtain) the advantage directly or through a third party.”

“8. (1) Any person who gives or promises to give an undue advantage to another person, and intends such undue advantage—

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that the provisions of this Section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this Section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.

Illustration—A person, ‘P’ gives a public servant, ‘S’ an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. ‘P’ is guilty of an offence under this sub-Section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-Section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.”

“9. (1) A commercial organisation shall be guilty of an offence and shall be punishable with fine, if any person associated with the commercial organisation gives or promises to give any undue advantage to a public servant intending—

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this Section, a person gives or promises to give any undue advantage to a public servant if, and only if, such person is, or would be, guilty of an offence under Section 8, whether or not the person has been prosecuted for such an offence.

(3) For the purposes of Section 8 and this Section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation if, irrespective of any promise to give or giving of any undue advantage which constitutes offence under sub-section (1), such person is a person who performs services for or on behalf of the commercial organisation.

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who performs services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under Section 8 and this Section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions about the adequate procedures which can be put in place by the commercial organisations to prevent persons associated with them from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary.

10. Where an offence under Section 9 is committed by a commercial organisation, and such offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this Section, "director", in relation to a firm means a partner in the firm."

6. The Committee took up for consideration Clause 5 and endorsed the deletion of Section 11 from the PC Act, 1988.

7. The Committee took up for consideration Clause 6 which seeks to amend Section 12 of the Principal Act and provide punishment for abettors and decided that the following Clause be incorporated in the Bill:

"12. Whoever abets any offence punishable under this Act other than any offence under Section 15, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."

8. The Committee took up for consideration Clause 7 which seeks to amend Section 13 of the Principal Act and decided that the following Clause be incorporated in the Bill:

"For sub-section (1) of section 13 of the principal Act, the following shall be substituted, namely:—

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation 2.—In Explanation 1, "known sources of income" means income received from any lawful sources."

9. The Committee took up for consideration Clause 8 which seeks to amend Section 14 of the Principal Act to provide for an enhanced minimum punishment of five years and decided that the following Clause be incorporated in the Bill:

"For Section 14 of the principal Act, the following section shall be substituted, namely:—

"14. Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine."

10. The Committee took up for consideration Clause 9 which seeks to amend Section 15 of the Principal Act and endorsed the amendments as they were consequential in nature.

11. The Committee felt that there is a need to make consequential amendments to Section 16 of the Principal Act in view of the amendments to the Bill and decided that the following Clause be incorporated as Clause 10 in the Bill:

“In Section 16 of the Principal Act—

for the words, brackets and figures, "sub-Section (2) of Section 13 or Section 14", the words, figures and brackets "Section 7 or Section 8 or Section 9 or Section 10 or sub-section (2) of Section 13 or Section 14 or Section 15" shall be substituted;

for the word, brackets and letter “clause (e)” the word, brackets and letter “clause (b)” shall be substituted.”

12. The Committee took up for consideration Clause 11 which seeks to amend Section 17 of the Principal Act and endorsed the amendments as they were consequential in nature.

13. The Committee took up for consideration Clause 12 which seeks to insert a new Section 17A in the Principal Act for seeking sanction for launching investigation against a public servant for offences alleged to have been committed under the Act and decided that the following Clause be incorporated in the Bill:

“17A(1) No police officer shall conduct any enquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

14. The Committee took up for consideration Clause 13 which seeks to insert a new Chapter IVA in the Principal Act for attachment and forfeiture of property obtained from proceeds of corruption and decided that the following Clause be incorporated in the Bill:

“After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER IVA

ATTACHMENT AND FORFEITURE OF PROPERTY

18A. (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.”

15. The Committee took up for consideration Clause 14 which proposed amendments to Section 19 of the Principal Act and endorsed the Clause as given by the official amendments proposed by the Government.

16. The Committee took up for consideration Clause 15 which seeks to amend Section 20 of the Principal Act and decided that the following Clause be incorporated in the Bill:

“For section 20 of the principal Act, the following section shall be substituted, namely:—

"20. Where, in any trial of an offence punishable under section 7, it is proved that an accused person has accepted or obtained or has agreed to receive or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that undue advantage, as the case may be, intending that, in consequence, a public duty would be performed improperly either by himself or by another public servant."

17. The Committee took up for consideration Clause 16 which seeks to amend Section 23 of the Principal Act and endorsed the amendments as they were consequential in nature.

18. The Committee took up for consideration Clause 17 and endorsed the omission of Section 24 from the PC Act, 1988.

19. The Committee took up for consideration Clause 18 and endorsed the insertion of new Section 32 in the Principal Act which grants rule making power to the Central Government.

20. The Committee took up for consideration Clause 19 and endorsed the amendments to the Schedule to the Prevention of Money Laundering Act, 2002 in view of insertion of new Chapter IVA for attachment and forfeiture of property.

21. The Committee took up for consideration, and adopted the Enacting Formula and Title and Clause 1 of the Bill with changes which were consequential in nature namely, '2013' and 'Sixty-fourth' to be substituted by '2016' and 'Sixty-seventh', respectively.

(The witnesses then withdrew)

22. Verbatim recording of the proceedings was kept.

23. The Committee adjourned at 5.45 P.M.

XV

FIFTEENTH MEETING

The Select Committee on Prevention of Corruption (Amendment) Bill, 2013 met at 10.00 A.M. on Thursday, the 11th August, 2016 in Room No.63, First Floor, Parliament House, New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairman

MEMBERS

2. Shri Naresh Agrawal
3. Shri Sukhendu Sekhar Roy
4. Mir Mohammad Fayaz
5. Shri D. Raja
6. Shri Rajeev Chandrasekhar
7. Shri Tiruchi Siva
8. Shri C.P. Narayanan
9. Shri Naresh Gujral
10. Shri Dilipbhai Pandya
11. Shri A. Navaneethakrishnan
12. Shri Praful Patel
13. Shri Harivansh
14. Shri Satish Chandra Misra
15. Shri Swapan Dasgupta

SECRETARIAT

Shri K. P. Singh, Joint Secretary

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhanem Guite, Assistant Director

2. At the outset, the Chairman welcomed the Members of the Committee to the meeting and informed that amendments/suggestions to the Bill have been received from Shri D. Raja, Shri Hishey Lachungpa, Shri Naresh Agrawal, Shri C.P. Narayanan, Shri Rajeev Chandrasekhar and Shri Harivansh. He stated that some of the suggestions have been incorporated in the Bill to be reported.

3. The Committee, thereafter, took up for consideration and adoption, the draft Report and the Bill to be reported. The Chairman of the Committee proposed the following changes in the Bill:

- In Section 7, the words ‘or agrees to receive’ to be deleted.
- In Section 8 the minimum punishment may not be prescribed and it may be left to the discretion of the Court to decide the quantum of punishment on the basis of gravity of offence in terms of imprisonment or fine or both.

- In Section 10, the words ‘in Court’ to be added after the words ‘and such offence is proved’.

3.1 The Chairman also suggested the following corresponding changes in the draft Report :—

- The following lines may be added at the end of para 6.10:

"The Committee further recommends that the words ‘agrees to receive’ may be deleted from Section 7 and all relevant Sections in the Act."

- The following para may be added as para 6.14:

"The Committee feels that minimum term of sentence for bribe giver proposed under Section 8 may not be specified and leave it to the discretion of the Court to decide the quantum of minimum punishment on the basis of gravity of offence in terms of imprisonment or fine or both."

- The following sentence may be added in para 7.8. after the first sentence:

"The Committee further recommends that in the proposed Section 10, the words ‘in court’ be added after the words ‘ and such offence is proved’.

4. The Committee agreed to the changes proposed by the Chairman in the Bill as well as the Report.

5. In the course of deliberations, Members raised concern about the use of the terms ‘lawful sources’ in Section 13 of the Prevention of Corruption Act, 1988. It was observed that many a time, courts do not accept lawful sources as recognized by other authorities or statutory bodies. It was felt that there is a need to define the term to avoid multiple interpretations by the court of law. Accordingly, paragraph 10.3. was added to the Report to reflect the concerns of the Members.

6. The Report was adopted with the aforementioned changes. The Committee decided to present the Report to Rajya Sabha on the 12th August, 2016. The Committee also decided to lay the evidence tendered before the Committee in the Rajya Sabha. It authorized its Chairman, and in his absence, Shri Naresh Agrawal and in his absence Shri Swapan Dasgupta to present the Report and Evidence to Rajya Sabha.

7. The meeting adjourned at 10.30 A.M.

ANNEXURES

ANNEXURE I

Written suggestions/amendments received from Members of the committee on Bill.

1. Shri Hishey Lachungpa, MP (RS)
2. Shri D. Raja, MP (RS)
3. Shri Naresh Agrawal, MP (RS)
4. Shri C.P. Narayanan, MP (RS)
5. Shri Rajeev Chandrasekhar, MP (RS)
6. Shri Harivansh, MP (RS)

ANNEX. I

Comments of Hishey Lachungpa, MP—MEMBER (R.S.)

Comments and proposals of different organisations have been examined. They are dealt with in seriatim below. It may be mentioned that my comments deal only with substantial parts of the comments while ignoring minor ones.

1. Central Bureau of Investigation (CBI)

Reservation has been expressed on the following:—

(a) Proposed amendments to Section 7 contained in Clause 3 of the Enacting Formula. It is stated that the provision excludes private persons. In particular, the bribe givers and intermediaries and, therefore, has suggested retention of Sections 8, 9 and 10 of PC Act, 1988.

Comments: In view of Sub-Section 2 of the proposed Section 7 that begins with a non-obstante clause 'notwithstanding anything contained Sub-section (1)' read with clauses (a) and (b) of Explanation 3 to Section 7 which contains the words 'or through third party' and 'or another person', considered conjointly with the proposed clauses (a) and (b) of Section 8(1) at Sl. Nos. 8 and 9, the anxiety expressed by the organisation does not appear to well founded.

(b) Section 18A by which it has been proposed to retain the provisions of Criminal Law Amendment Ordinance (CLAO), 1944 with District Judge contained therein being replaced by a Special Judge as this Ordinance has been proposed to be repealed in the 249th Report of the Law Commission. It has been suggested that the procedure of attachment forfeiture as provided either in the Odisha Special Courts Act 2009 or the Bihar Special Courts Act, 2009 may be incorporated in the PC Amendment Act.

Comments: The suggestion may be discussed.

General: Suggestion for change in the quantum of punishment and fine to be made commensurate with the gravity of the offence appears to have some substance which appear to deserve consideration.

2. Department of Personnel and Training

It is suggested that Explanation 2 should cover the entire provision of Section 7 and not just Sub-section (1) as proposed.

Comments: In view of Sub-section 2 of Section 7, Explanations 1 to 5 read with clauses (a) and (b) of proposed Section 8(1), the suggestion does not appear to be sound.

3. Central Board of Direct Taxes

(a) It is suggested that burden of proof of innocence transferred to the accused under Section 20 of the Principal Act should also be placed upon those giving or offering bribe.

Comments: The suggestion is already covered by the proposed Section 8 and clauses (a) and (b) thereto as contained in Sl. Nos. 8 and 9 under CLAUSE 3 of the Bill as discussed above in comment to (a) of CBI reservation.

(b) It is expressed that the additional requirement contemplated in the proposed substitution to Section 13 (i) of proving the intention of the public servant to enrich himself illicitly is very difficult to establish in cases of collusive/consensual bribery.

Comments: The apprehension is taken care of by proposed Explanation 1 to clause (b) as contained under Explanation 2 at SI. No. 19 under CLAUSE 6 of the Bill Explanation 1 provides that 'a person shall presumed to have intentionally enriched himself if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of Income.'

4. Central Vigilance Commission (CVC)

(a) Time limit for completion of trial has been suggested.

Comments: This is covered by the proposed amendment to Section 4 of the principal Act under CLAUSE 2 of the Bill by insertion Sub-section 5 prescribing two years' period for completion of trial. If not, within further two periods of six months each for reasons to be recorded.

(b) The Proposed Provisions do not cover conduits or third parties who are in the chain of bribery.

Comments: Such persons clearly fall within the sweep of the proposed clauses (a) and (b) of Section (1) as discussed above in the comments to (a) of CVC.

(c) No explanation to Section 7(3) has been provided.

Comments: No such explanation appears to be necessary in view of the definition of 'Public Duty' as contained in 2(b) of the principal Act.

(d) Definition of Commercial Organisation as contained in Sub-section (3) of Section 9 of the Amendment Bill, 2013 be expanded by including 'trust', 'sole proprietor', etc..

Comments: In view of the wide expressions used in the present provisions contained in (i) to (iv) of clause (a) read with clauses (b) and (c) of Sub-section 3 read in clauses, the amendment as suggested would not be necessary.

(e) In the Amendment Bill, 2013 under clause 10 providing amendment to Section 19 pertaining to Sanction for prosecution, it is suggested that a provision should be made to give an opportunity of hearing before grant or refusal of sanction to public servants.

Comments: In view of the ample safeguards already in place in various statutes, the amendment would not be desirable. Moreover, such a provision would cause further delay in the process.

General Observations:

Apart from the above, it is noticed that there is a general convergence of opinion on the objection to the proposed Section 17A under NEW CLAUSES 8A and 8B of the Bill providing the necessity of seeking previous approval of the Lokpal and the Lokayukta before conducting investigation into offence under the Act on the ground that: (a) it shall cause unnecessary delay; (b) it shall render the provision of Section 19 of the Prevention of Corruption Act, 1988 redundant and, (c) the Lokpal and the Lokayukta will be unduly burdened with the task of processing large number of complaints made to various agencies.

In addition and supplemental to such views my own views have been appended hereto separately as I agree with those.

➤ On the suggestions/comments of Dr. Jitendra Singh, my views are restricted to the 'new clauses 8A and 8B' in the Bill submitted by him with particular reference to the proposed Section 17A.

➤ The provision requiring previous approval of the Lokpal or the Lok Ayukta as proposed would be retrograde as it seeks to curtail the powers of investigation by the

Agency under the Delhi Police Establishment Act, 1946 in respect of complaints received by it against public servants in matters falling within the purview of the Lokpal and Lok Ayukta Act, 2013 even in cases which are not pending before either the Lokpal or the Lok Ayukta.

➤ The proposal would defeat the object of expeditious investigation as the time that would be consumed in obtaining such approval may be considerably long.

➤ The Agency should have the liberty to investigate in matters not before the Lokpal or the Lok Ayukta having regard to the spirit of section 19(1) of Prevention of Corruption Act, 1988 (the principal Act) as amended by the Lokpal and Ayukta Act/ 2013.

➤ Sufficient safeguard in favour of the persons complained against already exists under Section 17 of the principal Act where it is provided that no investigation for offences punishable under the Act can be taken up without the order of a Metropolitan Magistrate or a Magistrate of the First Class. Creation of one more authority of approval for investigation in addition to the above, which the provision seeks to do, would unnecessarily hinder investigation into complaints for offences under the Act made directly to the Agency and not filed before either the Lokpal or the Lok Ayukta.

➤ The role of the investigating agencies in respect of cases pending inquiry before the Lokpal or the Lok Ayukta, has been prescribed in Chapter VII under Section 20 and Sub-sections thereunder.

Shri D. Raja, Member of Parliament (Rajya Sabha)

NOTICE OF AMENDMENTS THE PREVENTION OF CORRUPTION
(AMENDMENT) BILL, 2013 (As introduced in the Rajya Sabha)

ENACTING FORMULA

1. That at page 1, line 1, *for* the word "Sixty-fourth", the word "Sixty-seventh" be *substituted*.

CLAUSE 1

2. That at page 1, line 2, *for* the figure "2013", the figure "2016" be *substituted*.

NEW CLAUSE 1A

3. 'That at page 1, *after* line 4, the following be *inserted*, namely:—

"1 A. In the Prevention of Corruption Act, 1988 (hereinafter referred to as the principal Act), in section 2, after clause (c), the following clause shall be inserted, namely:—

(d) "undue advantage" means any gratification whatever, other than legal remuneration.

Explanation.— For the purposes of this clause,—

(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.'.

CLAUSE 2

4. That at page 1, *for* lines 5 and 6, the following be *substituted*, namely:—

"2. In section 4 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The special Judge shall ensure the completion of the trial within a period of two years from the date of filing of the ease:

Provided that in case, the trial is not completed within a period of two years, the special Judge shall record the reasons therefor and complete the trial within a further period of six months which may be extended for six months each at a time, for the reasons to be recorded in writing, but the total period for completing the trial shall not exceed four years.”.

CLAUSE 3

5. That at page 1, *for* lines 9 to 15, the following be *substituted*, namely:—

"7. (1) Any person, being, or expecting to be, a public servant who obtains or agrees to receive or accepts or attempts to obtain, an undue advantage from any person shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Notwithstanding anything contained in Sub-section (1), any person, being, or expecting to be, a public servant who, —

(a) obtains or agrees to receive or accepts or attempts to obtain from any person,

an undue advantage, intending that in consequence a public function or activity would be performed improperly either by himself or by another public servant; or

(b) obtains or agrees to receive or accepts or attempts to obtain, an undue advantage as a reward for the improper performance (whether by himself or by another public servant) of a public function or activity; or

(c) performs, or induces another public servant to perform, improperly a public function or activity in anticipation of or in consequence of agreeing to receive or accepting an undue advantage from any person,

shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(3) For the purposes of this Act,—

(a) a function or activity is a public function or activity, if—

(i) the function or activity is of a public nature;

(ii) the function or activity is performed in the course of a person's employment as a public servant;

(iii) the person performing the function or activity is expected to perform it impartially and in good faith; and

(iv) the person performing the function or activity is in a position of trust by virtue of performing it;

(b) a public function or activity is performed improperly, if—

(i) it is performed in breach of a relevant expectation; and

(ii) there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation;

(c) "relevant expectation",—

(i) in relation to a public function or activity performed, means the performing of the public function or activity impartially or in good faith, as the case may be;

(ii) in relation to a public function or activity performed in a position of trust (by virtue of performing such function or activity), means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of such trust;

(d) anything that a public servant does, or omits to do, arising from or in connection with that person's past performance of a public function or activity shall be treated as being done, or omitted, by that person in the performance of that function or activity;

(e) the test of what is expected is a test of what a reasonable person in India would expect in relation to the performance of the type of public function or activity concerned.

Explanation 1.—For the purpose of sub-section (I), the obtaining, agreeing to receive, accepting, or the attempting to obtain an undue advantage itself constitutes the improper performance of a public function or activity.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. S is guilty of an offence under sub-section (I).

Explanation 2.—For the purpose of sub-section (I), the expressions "obtains" or "attempts to obtain" shall cover cases where a person, being, or expecting to be, a public servant, obtains or attempts to obtain, any undue advantage for himself or for another

person, by abusing his position as a public servant or by using his personal influence over another public servant; or by acting in violation of a statutory duty or any set of rules, government policies, executive instructions and procedures: or by any other corrupt or illegal means.

Explanation 3.—For the purpose of this section, it shall be immaterial whether—(a) such person being, or expecting to be, a public servant obtains or agrees to receive or accepts, or attempts to obtain (or is to agree to receive, or accept) the advantage directly or through a third party;

(b) the undue advantage is, or is to be, for the benefit of such person being, or expecting to be, a public servant or another person.

Explanation 4.—"Expecting to be a public servant". If a person not expecting to be in office agrees to receive or accepts or attempts to obtain from any person, any undue advantage by deceiving such other person into a belief that he is about to be in office, and that he will then serve him, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

Explanation 5.—For the purpose of this section, where a public servant, or a person expecting to be a public servant induces another person erroneously to believe that his influence with the (government has obtained a title or other benefit for that person and thus induces such person to give to him any undue advantage as a reward for this service, the public servant or person expecting to be a public servant has committed an offence under this section.

6. That at page 2, lines 1 to 44, be *deleted*.

7. That at page 3, lines 1 to 22, be *deleted*.

8. That at page 3, *for* lines 23 to 25, the following be *substituted*, namely:—

"8(1) Any person who—(a) offers, promises or gives an undue advantage to another person, and intends such undue advantage 2".

9. That at page 3, *for* lines 30 to 33, the following be *substituted*, namely:—

"(b) offers, promises or gives an undue advantage to a public servant and knows or believes that the acceptance of such undue advantage by the public servant would itself constitute the improper performance of a public function or activity,".

10. That at page 3, *for* lines 36 to 38, the following be *substituted*, namely:—

"Provided that when the offence under this section has been committed by a person associated with a commercial organization in order to benefit a commercial organisation, such person shall be subject to the punishment as defined in section 8(1) and in addition the commercial organisation so benefited or sought to be benefited, shall be punishable with fine:

Provided further that nothing in sub-section (1) shall apply to any person who offered, promised or gave any undue advantage to another person in order to secure what was in any case an entitlement of the person who offered, promised or gave the undue advantage."

11. That at page 3, *after* line 38, the following be *inserted*, namely:—

"*Illustration 1.* —A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. P is guilty of an offence under clause (a) of this sub-section.

Illustration 2.—A person 'P' gives a government doctor who is a public servant, 'D' an amount of one thousand rupees to get the doctor to treat the daughter of 'P' who is critically ill, which in any case is an entitlement or right of 'P', then 'P' is not guilty of an offence under clauses (a) or (b) of this sub-section."

12. That at page 3, *for* lines 39 to 43, the following, be *substituted*, namely:—

"*Explanation*—It shall be immaterial whether the person to whom the undue advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the public function or activity concerned, and, it shall also be immaterial whether such undue advantage is offered, promised or given by the person directly or through a third party."

13. That at page 3, *after* line 43, the following be *inserted*, namely:—

"(2) Nothing in sub-section (1) shall apply to a person, if that person has, after informing a law enforcement authority or investigating agency, offered or gave any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.

(3) Nothing in sub-section (1) shall apply to a person, if that person has voluntarily, within a period of 30 days, after offering, promising or giving any undue advantage to another person, reported the same to the police or any agency authorised to receive complaints or information under this Act:

Provided that the person referred to in sub-section (3) above shall be given immunity only from criminal liability under this Act and will have to return or pay a matching amount for any thing secured as a result of offering, promising or giving any undue advantage to another person.

(4) Nothing in sub-section (1) shall apply to a person, if that person after giving any undue advantage to another person, is willing to turn approver against that person and assist the investigating agency in proceeding with the case against that person under this Act:

Provided that the person referred to in sub-section (4) above shall only be immune from criminal liability under the Act and will have to return or pay a matching amount for any thing secured as a result of giving any undue advantage to another person.

Explanation.—For the removal of doubts, it is clarified that the expression "another person" in this sub-section and in section 9, shall include a person being, or expecting to be, a public servant."

14. That at page 4, line 3, *for* the words "a financial or other advantage to a public servant", the words any undue advantage to another person" be *substituted*.

15. That at page 4, in line, *after* the words "prove that", the following may be *added*, namely—

"it did not authorise or in any manner abet any person associated with it to undertake such offence as defined in sub-section 1 and that".

16. That at page 4, *for* lines 10 to 13, the following be *substituted* namely,—

(2) For the purposes of this section, any person associated with a commercial organisation who offers, promises or gives any undue advantage to another person as defined in Section 9(1) shall be guilty of an offence under section 8(1)(b), and shall be liable to such punishment as defined therein.

17. That at page 4, line 28, be *deleted*.

18. That at page 4, in line 29, the words "constitutes offence under sub-section(1)", be *deleted*

19. That at page 4, in line 42, the words "the offence under Section 8 and this section", be *substituted* with "all offences under this Act".

20. That at page 4, *after* line 42, the following be *inserted*, namely:—

"(5) The Central Government shall, in consultation with the concerned stakeholders, and with a view to enhancing compliance with the provisions about the

adequate procedures which can be put in place by the commercial organisations to prevent persons associated with them from bribing any person, being or expecting to be, a public servant, prescribe such guidelines as may be considered necessary."

21. That at page 4, *for* lines 43 to 48, the following be *substituted*, namely:—

"10. Where an offence under section 8 or section 9 is committed by a commercial organisation or by any person associated with a commercial organisation, and such offence is proved to have been committed with the consent, or connivance of, or abetment by, or is attributable to any neglect or lapse on the part of, any director, manager, secretary or other officer of the commercial organisation, such director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine."

22. That at page 5, lines 1 to 10, be deleted.

CLAUSE 5

23. That at page 5, line 16, *after* the words "offence punishable under this Act," the words "other than any offence under section 15," be *inserted*.

CLAUSE 6

24. That at page 5, *for* lines 26 to 32, the following be *substituted*, namely:—

"(b) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

CLAUSE 7

25. That at page 5, line 37, *for* the words "three years", the words "five years" be *substituted*.

NEW CLAUSE 8A

26. That at page 5, *after* line 40, the following be *inserted*, namely:—

"8A. Section 17 of the principal Act, shall be substituted as follows—

17. Persons and authorities authorized to investigate and prosecute

17(1) Any information received or any complaint which is made to a police officer or any agency (including the Delhi Special Police Establishment) in respect of an alleged offence under this Act shall be referred by such police officer or agency—

(i) to the Lokpal in respect of a public servant referred to in clauses (a) to (h) of sub-section (1) of section 14 of the Lokpal and Lokayuktas Act, 2013;

(ii) to the Lokayukta of the State or such authority established by law in that State in respect of public servants under the jurisdiction of the Lokayukta of the State or such authority established by law in that State.

(2) Any information or complaint referred by a police officer or the agency under sub-section (1), shall be deemed to be a complaint made to—

(a) the Lokpal under clause (e) of sub-section (1) of section 2 of the Lokpal and Lokayuktas Act, 2013 and all the provisions of the said Act shall apply accordingly to

such complaint and the Lokpal shall inquire, investigate and prosecute in accordance with the provisions of the said Act;

(b) the Lokayukta of a State or such authority established by law in a State, as the case may be, and all the provisions of the law under which the Lokayukta or such authority has been established shall apply accordingly to such complaint and the Lokayukta or such authority shall inquire, investigate and prosecute in accordance with the provisions of the law under which the Lokayukta or such authority has been established."

(3) Any information or complaint which is made to a police officer or any agency (including the Delhi Special Police Establishment) in respect of an alleged offence under this Act which does not fall under sub-clauses (1) or (2) above, shall be investigated by the following authorized persons,—

(i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

Explanation—Where the Lokpal or the Lokayuktas or such authority in states have not been established or are not functional, the provisions of Section 17(3) shall apply."

NEW CLAUSE 8B

27. That at page 5, *after* line 40, after Clause 8A, the following be *inserted*, namely:—

"8B. In Section 18 of the Principal Act, the words "section 17" be replaced with "section 17(3)".

CLAUSE 9

28. That at page 5, *for* lines 44 and 45, the following be *substituted*, namely:—

"18A. (1) Save as otherwise provided in the Lokpai and Lokayuktas Act, 2013 or the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".

29. That at page 6, lines 1 to 54, be *deleted*.

30. That at page 7, lines 1 to 55, be *deleted*.

31. That at page 8, lines 1 to 50, be *deleted*.

32. That at page 9, lines 1 to 57, be *deleted*.

33. That at page 10, lines 1 to 36, be *deleted*.

CLAUSE 10

34. That at page 10, *for* lines 37 to 49, the following be *substituted*, namely "10. Section 19 of the principal Act, be *substituted* as follows, namely—

19. Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013, or the provisions of the law under which the Lokayukta of a State or such authority is established in a state, no court shall take cognizance of an offence alleged to have been committed by a public servant under this Act, except with the previous sanction of—

(1) a committee consisting of—

(a) A retired judge of the High Court nominated by the Chief Justice of that court in the case of a state, or a retired judge of the Supreme Court nominated by the Chief Justice of the Supreme Court in case of the Central government, who shall be the Chairperson of the committee

(b) Former member of the police service not below the rank of inspector general of Police or equivalent to be nominated as laid down in sub-section (2)

(c) Former member of the administrative service not below the rank of Principal Secretary to be nominated as laid down in sub-section (2):

Provided that the committee, shall convey its decision under this sub-section within a period of three months, which may, for reasons to be recorded in writing, that the consultation with the Attorney General or the Advocate General, as the case may be, is required, be extended by a further period Of one month:

Provided further that on the expiry of the stipulated time-frame, sanction for prosecution shall be deemed to have been given.

(2) The members of the committee referred to in sub-section(b) and (c) above, shall be appointed by the Chairperson referred to in sub-section (1) on the recommendation of a committee consisting of—

(a) The Chief Minister in the case of a State, the Prime Minister in case of the Central government, who shall be the chairperson of the committee.

(b) Leader of the single largest party in opposition in the Legislative Assembly in the case of a State, the Leader of the single largest party in opposition in the Lok Sabha in case of the Central government.

(c) Chairperson of the committee referred to in sub-section (1) of section 19."

35. That at page 11, lines Ito 20 be *deleted*.

CLAUSE 11

36. That at page 11, *for* lines 25 to 27, the following be *substituted*, namely:—

"to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that undue advantage,".

NEW CLAUSE 11A

37. That at page 11, *after* line 29, the following be *inserted*, namely:—

"11A. In section 23 of the principal Act,—

(a) in the marginal heading, for the word, figures, brackets and letter "section 13 (1) (c)", the word, figures, brackets and letter "section 13 (I) (a)" shall be substituted;

(b) for the word, brackets and letter "clause (c)", the word, brackets and letter "clause (a)" shall be substituted."

CLAUSE 12

38. Section 24 shall be omitted.

CLAUSE 13

39. That at page 1 1, *for* lines 31 to 34, following be *substituted*, namely:—

"13. *After* section 31 of the principal Act, the following section shall be *inserted*, namely:—

"32. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) prescribing guidelines about the adequate procedures which can be put in place by commercial organisations to prevent persons associated with them from bribing any person, being or expecting to be, a public servant, under subsection (5) of section 9;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the scission immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

NEW CLAUSE 13A

40. That at page 11, *after* line 34, a new clause 13A be *inserted* namely:—

"13A. *After* Section 31 of the principal Act and clause 13, the following section shall be *inserted*, namely—

33 No suit, prosecution or other legal proceeding under this Act shall lie against any person for anything which is done in good faith."

CLAUSE 14

41. That at page 11, *for* lines 35 to 37, following be *substituted*, namely:—

Clause for "14. In the Prevention of Money Laundering Act, 2002, in Part A of the Schedule, for Paragraph 8, the following Paragraph shall be substituted, namely:—

"PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Description Offence

Section

7. Offence relating to public servant being bribed.
8. Offence relating to bribing a public servant.
9. Offence relating to bribing a public servant by a commercial organization.
12. Punishment for abetment of offences defined in the Act.
13. Criminal misconduct by a public servant.
14. Punishment for habitual offender.".

Shri Naresh Agarwal, Member of Parliament (Rajya Sabha)

Amendment to the Bill—Reservations reg.

- Point 2 The Definition of Undue Advantage' should be clear in Sec. 2D. The taking of bribe should be linked to taking money only.
- The words 'not limited' in Para 2(d) (a) of the Explanation be clarified. Taking money should be linked with it, please do not keep it unlimited.
- Point 3 Clarify the timing in Sec. 4(5). whether the initiation of the case would be the date of cognisance, date of FIR or Date of Charge Sheet.
- The period of the trial shall not exceed to total four years. Pl. clarify if the trial is not completed with four years then in such case whether it would treated as convicted or the case would be set aside.
- Point 4 There is a provision of penalty of seven years' imprisonment or a fine along with three years' imprisonment in Sec. 7(1). Pl. Clarify the definition of fine and the extent thereof. Whether there is any limit or not.
- What is meant by Activity in Sec.7(2)(b). Clarify whether it is a public activity or a private activity.
- Sec. 8 should be deleted.
- The word "Charitable" should be deleted from Sec. 9(3)(b).
- Under Sec. 10 please clarify whether the Chairman or the Director will also be held accused if they are named by the bribe-giver.
- Point 7 the clause of Presumption be deleted from Sec. 13(1)(b). Do not presume. The responsibility to prove be left to the prosecution.
- By fixing the time-frame for the trial it should not turned into a slaughter house like a Fast Track court.
- From where we shall get the witnesses if the bribe-givers and bribe- takers are held responsible, it should be considered.

Sd/-

(NARESH AGARWAL)

Shri C.P.Narayanan, Member of Parliament (Rajya Sabha)

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2016
SUGGESTED AMENDMENTS

1. In Clause 9 (1) *add* as (c)—

(c) to prevent or cause to prevent another commercial organisation from having a due advantage in the conduct of business;

2. 9 (2) may be reworded as —

(2) For the purpose of this section a person is, or would be, guilty of an offence under section 8 if, and only if, such a person offers, promises or gives, any undue advantage to a public servant, whether or not the person has been prosecuted for such an offence.

3. (c) may be reworded as follows:

(c) a person is said to be associated with a commercial organisation if disregarding any offer, promise or getting any undue advantage which constitutes an offence under sub-section (i) performs services for or on behalf of the commercial organisation.

4. (3) (f) Explanation 2 —

Reword first line as —

Whether or not the person is one who performs.....

5. 9(3) (f) footnote —

Whether all institutions registered under Charitable Services Act are to be excluded?

6. 17(a) last line—

The wording may be—

"connection with the officers of the union, of that government ;

7 (c) may be reworded as follows:

(c) a person is said to be associated with a commercial organisation if disregarding any offer, promise or getting any undue advantage which constitutes offence under sub-section (1), performs services for or on behalf of the commercial organisation.

8. 11(a) reword the last line as —

Connection with the affairs of the union, of that government

Sd/-

(C.P. NARAYANAN)
Member of Rajya Sabha

Shri Rajeev Chandrasekhar, Member of Parliament (Rajya Sabha)

Suggestions to improve Prevention of Corruption Bill, 2016

1. In Clause 4 and in Clause 7, add in "forbearance wilful negligence/ omission" as additional Acts of Corruption.

2. Delete Section 17 (A), under Clause 12 because such a sanction for investigation would effectively blunt the impact of Section 7 and 8.

Sd/-

(RAJEEV CHANDRASEKHAR)

Shri Harivansh, Member of Parliament (Rajya Sabha)

NOTE

- In our country, the Prevention of Corruption (Amendment) Bill, 2013 was approved as it brought change in the Prevention of Corruption Act, 1988.
- The Act covered the offence of giving a bribe to a public servant under abetment. The Bill makes specific provisions related to giving a bribe to a public servant, and giving a bribe by a commercial organisation.
- The Bill redefines criminal misconduct to only cover misappropriation of property and possession of disproportionate assets.
- The Bill modifies the definitions and penalties for offences related to taking a bribe, being a habitual offender and abetting an offence.
- Powers and procedures for the attachment and forfeiture of property of public servants accused of corruption have been introduced in the Bill.
- The Act requires prior sanction to prosecute serving public officials. The Bill extends this protection to former officials.
-
- Result?
- The corruption cases increased and more than 70-80 percent of cases registered by the investigating agencies under the Prevention of Corruption Act in Bihar, Jharkhand and West Bengal during 2005-10, failed to end in conviction of the accused civil servants Reason?
- A number of factors were responsible for this sorry state of affairs. One, the FIR was filed on the basis of a complaint registered by the investigating agency. The government gave permission to prosecute the civil servant. Soon, he/she was arrested and jailed. The court/intervened following the alleged accused's lawyer pleading in his favour and found that the accused was innocent because the prosecuting agency had acted against him/her without evidences and witnesses standing in favour of the prosecutor.

As who all know that the anti corruption laws are there in many developed countries.

For instance the US Foreign Corrupt Practices Act (FCPA), the UK Bribery Act (UKBA), the Canadian Corruption of Foreign Public Officials Act (CFPOA) and other similar anti-corruption legislation around the world prohibits corporations and individuals from engaging in bribery and requires. Corporations to maintain accurate financial records.

Failure adopt effective compliance programmes and procedures can result in serious reputational damage, significant fines, imprisonment for individuals, and debarment of organizations from conducting business with national and local governments. Merely adopting a policy that simply states the requirements of the law is not sufficient.

Adopting a robust program that effectively fosters a culture of compliance endorsed and promoted by the top leadership of the organization, frequently engages in thoughtful risk assessment, adopts proportional procedures based on identified risks, requires due diligence on third-party partners, promotes regular auditing, and ensures effective training and communication about the program, can reduce or prevent civil and criminal liability even when a rogue employees engages in an act of corruption or bribery.

As such the need of the hour is to first examine and record the lose parts of the existing anti corruption law in our country, study the merit and demrits of anti corruption laws practiced in developed countries and and then take a holistic approach to come up with an appropriate law.

Sd/-
Member (R.S.)
Divison No. 158

ANNEXURE II

SELECT COMMITTEE OF RAJYA SABHA ON PREVENTION OF CORRUPTION
(AMENDMENT) BILL, 2013

List of Organisations/Experts/Individuals who submitted memoranda on the Bill

S. No. A. UNION GOVERNMENT

1. Department of Personnel & Training, M/o of Personnel, Public Grievances and Pensions
2. Central Vigilance Commission (CVC)
3. Central Bureau of Investigation (CBI)
4. Central Board of Excise & Customs (CBEC)
5. Central Board of Direct Taxes (CBDT)
6. Comptroller & Auditor General of India (C&AG)
7. Directorate of Enforcement (ED)

B. STATE GOVERNMENT/UT ADMINISTRATION

8. State Government of Karnataka
9. State Government of Tamil Nadu
10. State Government of Maharashtra
11. State Government of Gujarat
12. State Government of Kerala
13. State Government of Odisha
14. State Government of Bihar
15. State Government of Jharkhand
16. State Government of Haryana
17. State Government of Himachal Pradesh
18. State Government of Uttarakhand
19. State Government of Chhattisgarh
20. State Government of Rajasthan
21. State Government of Mizoram
22. State Government of Sikkim
23. State Government of Manipur
24. State Government of Assam
25. State Government of Tripura
26. State Government of Nagaland
27. State Government of Arunachal Pradesh
28. State Government of Puducherry
29. State Government of Meghalaya
30. UT Administration of Daman and Diu and Dadra and Nagar Haveli
31. UT Administration of Andaman and Nicobar Islands

-
32. National Capital Territory of Delhi
 - C. PSUs/PSBs
 33. Bharat Electronics Limited
 34. Antrix Corporation
 35. Kudremukh Iron Ore Company Ltd. (KIOCL)
 36. Bharat Petroleum Corporation
 37. Oil Natural Gas Corporation
 38. Life Insurance Corporation of India Ltd.
 39. Shipping Corporation Ltd.
 40. India Rare Earth Ltd.
 41. Kolkata Port Trust
 42. Coal India Ltd.
 43. National Insurance Company Ltd.
 44. Jute Corporation of India
 45. Damodar Valley Corporation Ltd.
 46. Canara Bank
 47. Syndicate Bank
 48. Dena Bank
 49. Bank of Baroda
 50. UCO Bank
 51. Allahabad Bank
 - D. PROFESSIONAL BODIES/CHAMBER & COMMERCE INDUSTRIES
 52. Federation of Karnataka Chamber of Commerce & Industries
 53. Indian Bank's Association(IBA)
 54. Bombay Chamber of Commerce and Industry
 55. Institute of Cost Accountant of India
 56. Bengal Chamber of Commerce and Industry
 57. Bharat Chamber of Commerce
 58. Institute of Chartered Accountants of India (ICAI)
 59. Institute of Company Secretaries of India (ICSI)
 60. Federation of Indian Chambers of Commerce and Industry (FICCI)
 61. PHD Chamber of Commerce
 62. Confederation of Indian Industry (CII)
 - E. NGOs
 63. Namma Bengaluru Foundation, Bengaluru
 64. Lok Satta, Hyderabad
 65. Janagraha, Bengaluru

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66. Avantika Foundation, Bengaluru
 67. Civic Bangalore, Bengaluru
 68. Coalition Against Corruption, Bengaluru
 69. National Campaign for People's Right to Information (NCPRI)
 70. PRS Legislative Research
 71. Society for Awareness of Civil Rights
- F. EMPLOYEES ASSOCIATION
72. Karnataka State Government Employees' Association
 73. All India Bank Employees' Association
 74. All India Bank Officers Confederation
 75. Confederation of Central Government Gazetted Officers' Organisation
 76. Confederation of Civil Service Associations
 77. Indian Civil and Administrative Service (Central) Association
- G EXPERTS
78. Justice Santosh Hegde, (Retd.) Judge of Supreme Court & Former Lokayukta, Karnataka
 79. Shri V. Balasubramanian, Former Additional Chief Secretary, Government of Karnataka & Chairman, Transparency International, India — Karnataka
 80. Lokayukta, Andhra Pradesh and Telangana
 81. Anti Corruption Bureau, Hyderabad
- H. GENERAL PUBLIC
82. Shri Naresh Govind Vaze, Mumbai
 83. Shri Radhe Shyam Gora, Advocate, Supreme Court, New Delhi
 84. Shri B.M. Chatwani, Ex-Capt., Indian Army, Ahmedabad
 85. Shri Bhrahm Swaroop Agrawal, IOFS (Retd.), New Delhi
 86. Shri M.K. Unnikrishna Pannicker, Member, Permanent Lok Adalat, Vanchiyoor
 87. Shri S Ravindra Kumar, Chennai
 88. Shri CMA Dilip Kumar Mohanty, Odisha
 89. Shri Dinesh Patel, Ahmedabad
 90. Shri R.N. Tiwari
 91. Shri Sanjay Khuteta
 92. Shri Ranjit Singh, Lajpat Nagar, New Delhi
 93. Shri Ashok Kapur, New Delhi
 94. Shri Yatendra Singh
 95. Shri Shamim Banu

ANNEXURE III

STUDY NOTE

STUDY VISIT REPORT OF SELECT COMMITTEE OF RAJYA SABHA ON PREVENTION
OF CORRUPTION (AMENDMENT) BILL, 2013 TO BENGALURU, MUMBAI AND
KOLKATA

During the study visit to Bengaluru, Mumbai and Kolkata the Committee had interaction with authorities associated with anti-corruption agencies of State Governments of Karnataka, Tamil Nadu, Gujarat, Maharashtra, West Bengal, Bihar, Odisha and Union Territories of Andaman & Nicobar Islands and Dadra Nagar & Haveli, Select Public Sector Banks/ Undertakings, Chamber of Commerce of Industries, Employees Associations, Legal experts and NGOs on the Bill as well as official amendments proposed thereto in 2015. A list of Members of the Committee who joined the Study visit is at Annexure-I. A list of stakeholders from different organizations who deposed before the Committee is at Annexure-II. The gist of views culled out from their oral as well written submissions are enumerated as under:—

A. Previous Sanction to Prosecute Public Servant and initiate Investigation against Public Servant

- Previous sanction of Government for prosecuting public servant intended under Section 19 of the PC Act, 1988 and Section 197 of CrPC, 1973, may be done away with as those provisions are quite often used for withholding such sanction without attributing any reasons resulting in inordinate delay in prosecution. In the United Kingdom, there is no requirement of prior sanction of the Government for prosecuting government servants for corruption charges. The Director of Public Prosecution in the UK is competent to give approval for prosecutions against the public servant as well as for others.
- Section 197 of CrPC was included by the imperial authority to protect their officers from harassment of locals which may be dispensed with.
- Permission of competent authority is required to prosecute serving as well as retired government servants under Section 197 of CrPC while it is extended to only serving Government Servant under Section 19 of the PC Act for the offences under PC Act. The Bill now intends to extend immunity to retired Government employees for taking action during their tenure by providing prior permission of the competent authority to prosecute them after their retirement.
- Disciplinary authority should retain the power to grant sanction of prosecution of Government servant as that authority is well-versed with the functioning and conduct of his/her employee. Furthermore, Lokayukta happens to be a single Member body and some of the States are yet to establish Lokayuktas in their States. Apprehension have been expressed that the office of Lokpal/Lokayukta may be overburdened with the applications against public servant for granting prosecution. There is likelihood that the Lokayukta being a single member body may act in biased and prejudiced manner and may misuse the office.
- Even though Lokpal being a plural body would make objective appraisal of facts before granting sanction of prosecution, it may be burden-some work for that anti-graft body. On the other hand the competent authorities which have in depth knowledge of the circumstances of the case generally delay the permission indefinitely when there is hyper-corruption. Thus the following suggestions of

Second Administrative Reform Commission (2005) may be taken as guiding factors by the competent authority for granting prosecution of sanction:—

- Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possession of assets disproportionate to the known sources of income;
- Sanctioning authorities ought not to be summoned for evidence on the appropriateness of the sanction. The documents relating to the sanction ought to speak for themselves;
- There is no provision as to who is the sanctioning authority for MPs and MLAs. The Presiding Officer of the legislature concerned should be explicitly designated as the competent authority for granting permission to prosecute MLAs and MPs; and
- Prior sanction for prosecution applicable to serving public servants should also apply to retired public servants for acts performed while in service.
- The appointing authorities have the knowledge and better understanding of working of public servants concerned. As per the Constitutional provisions under Article 311, the power of appointing authority over public servant should not be delegated. This should be relatable to any decision taken by the public servant in discharge of his/her official duty. Thus, the prior approval of competent authority should be obtained along with comments of Lokpal/Lokayukta as well as public servants. The grant of sanction of prosecution by Lokpal/Lokayukta for prosecuting public servants under Section 23 of the Lokpal & Lokayuktas Act, 2013 may be *ultra vires* of Article 311 of Constitution.
- Appointing authority should have power of granting sanction for launching investigation and prosecution against public servant.
- Power of sanction for prosecution may be continued with the appointing authority in order to safeguard public servant from prosecution for the bonafide acts done in good faith while discharging his/her official function.
- It was contended that even if such provisions is to be retained in the PC Act, a time limit of three months may be given within which the sanction need to be granted failing which it would be considered as deemed sanction.
- A time limit for granting sanction to Lok pal/Lokayukta may be provided in the Act, failing which the same may be treated as deemed sanction.
- Requirement of prior sanction from the competent authority to arrest of public servants caught red handed or in the case of possession of assets disproportionate to his/her known source of income needs to be dispensed with.
- The requirement of prior sanction for prosecution currently available to serving public servant may be extended to retired Government Servant under the PC Act for the official acts done while in service. The empowered Committee comprising Central Vigilance Commissioner and the Secretary of the Department concerned in the case of Officers below the rank of Secretary and a Committee comprising the Central Vigilance Commissioner and the Cabinet Secretary in the case of Officer of the rank of Secretary may be constituted to sanction of prosecution within two months. Similary, arrangement may be made for the Officers of State Governments. In the case of refusal, the reasons for such refusal should be placed before the respective legislature annually.
- Sanction for investigation by CBI may be left to a Committee comprising the CVC and Secretary of the Department concerned in the case of Officer below the rank of Secretary and a Committee comprising the CVC and Cabinet Secretary in the case of Officer of the rank of Secretary.

- The authority who is competent to remove the public servant concerned may be vested with power to grant sanction for prosecution and investigation.

B. Time Bound Trial of Corruption Cases

- Corruption related cases are pending for more than ten to twenty years in States which deposited before the Committee. Majority of stakeholders are of the view that two years time limit proposed may be adhered to with extension of half of that period in exceptional cases. A time limit for investigation and time limit for giving sanction need to be provided in the Act for better conviction.

Existing Anti-corruption agencies are not able to punish high profile corrupt public servants. A constitutional body on the line of Corruption Eradication Commission (*Komisi Pemberantasan Korupsi-KPK*) of Indonesia may be created to tackle high profile corruption cases.

- Fixing time limit of two years extendable at six monthly intervals to four years for trial will not happen without streamlining the court procedures. Instead of making the law verbose the Supreme Court and High Court may lay down operative rules to prevent adjournments and hold trial on day-to-day basis as mentioned under Section 4 (4) of the Prevention of Corruption Act, 1988.
- A time limit may be prescribed for investigation agencies for completing the investigation and filing of charge sheet in the competent court.
- Fines may be imposed on the parties for seeking unnecessary adjournment on trivial issues in the trial of corruption related cases.

C. Definition of Bribery

- Refrain from acting in the exercise of his or her official duties, be made a criminal offence.
- Willful negligence is a misconduct which is handled by the disciplinary authority which can not be brought under the PC Act.
- Acts of glaring omission where the public servant has failed to act despite the representations received from public should be investigated and punished if found guilty.
- Legal validity of the terms — "agrees to receive or obtain" in the proposed Section 7 of the Prevention of Corruption Act, 1988 is yet to be tested as mere intention does not constitute crime unless such intention is acted upon.
- Introduction of *mens rea* under Section 13 of the Act is appropriate and long over due.
- Perversion of Constitution, willful negligence, obstruction to justice, squandering of public money need to be included in the definition of bribery.
- While sharing their experience, the Anti-Corruption agencies of the States submit that public servants demand and receive bribe to perform relevant public function, which he is bound to do under the law. In the proposed amendment, the public servant may be held guilty as he would demand bribe for improper performance of relevant public function/activity.
- The deletion of Section 13(i) (d) (iii) suffers from the vice of over classification of treating dishonest and honest public servants alike. The said provisions treat public servants who make an error of judgment on par with dishonest public servants who abuse the position to confer pecuniary gain.
- The public servant who is entrusted with public property by the Government would be acting in the position of trustee. When he/she misappropriate or convert

the Government property to his/her use, would amount to misappropriation. Thus further qualifications of fraudulent or dishonest mind of public servant should not be stressed. It was suggested to omit the words—'dishonestly or fraudulently' from Section 13(1) (b).

- The word 'Otherwise' in Section 13(1) (a) used before the word convert appears to be vague and liable to be misused. The formulation suggested by the State Government of Karnataka was as under:—

"(a) if he dishonestly or fraudulently misappropriate or converts for his own use any property entrusted to him or under his control as a public servants or dishonestly or fraudulently allows any other person so to do."

- There is need to provide an explanation to non-pecuniary benefit as there is possibility of misusing and file a malicious and false complaint by the public.
- Illustration or explanation to non-pecuniary gratification may be given in the Bill as it is difficult to codify non-pecuniary gratification.
- The word 'undue advantage' includes all forms of pecuniary and non-pecuniary gratifications and appears to be wide enough.
- The word 'unjust' may be preceded before the word 'undue advantage'
- To prove *mens rea* of public servant in disproportionate asset cases may put additional burden on the investigative agencies.
- Instances of showing undue favour to any private parties even without any gratification should be made a punishable offence.
- Acceptance of gift by public servant should be punishable. Article 18 of the Model Code of Conduct of the Council of Europe was alluded to in that context.
- Casual exchange of hospitality traditional gift/souvenir/memento subject to a certain monetary limit and courtesy lunch/dinner during meeting/official visit may not be brought under 'undue advantage'.
- The act of corruption committed outside the country by any public servant should be punishable under PC Act. Section 37 of the Prevention of Corruption Act of Singapore was alluded to in that context.
- The provisions of Section 10 of the Prevention of Corruption Act of Singapore to check corruption in public-private-partnership may be incorporated in the PC Act, 1988.

D. Definition of Public Servant

- Most of the teachers and principals are reportedly involved taking bribes for doctoring marks, leaking question paper, enmass copying and even generating black money through private tuition. Teaching is a public activity and any malpractices therein may be brought within the Prevention of Corruption Act, 1988.
- The staff of deemed university and their affiliated colleges functioning without financial aid of Government or any public authorities may not be brought under the Prevention Corruption Act.
- Inclusion of professionals under the definition of 'public servant' may discourage them rendering their services to public sector undertakings/banks.
- Willful defaulters should be brought under the Prevention Corruption Act to check corruption in Banking sectors.

- Professionals are subjected to disciplinary procedures laid down by their own regulatory bodies. In addition, they are covered under IPC and CrPC for criminal offence.
- NGOs getting 50% grant of operating cost or a sum equivalent to Rs. 1 crore or more during any of the preceding three years should be brought under the purview of PC Act.
- Inclusion of private valuers/surveyors/advocates/charted accountants on consideration from Government exchequer under the definition of public servant under the PC Act that may lead to further red-tapism.
- Section 2 may be amended to include 'retired' public servants in the definition of public servant in view of proposed amendment to Section 19 of the PC Act.
- All entities and individuals who executes public project or perform public duty should be brought under definition of public servant for the purpose of PC Act.
- Professional should be governed by the their own professional conduct and ethics rather than treating them as public servant under the PC Act.

E. Graded punishment for offence of bribery

- The bribe giver as well as the bribe taker including any abettor/intermediary/broker to be made criminally liable and equally punishable by law for the offence of corruption.
- Graded punishment in lieu of uniform punishment for bribe givers & bribe takers was suggested. The degree of punishment needs to be relatable to the quantum of bribes. In that context, amendments to Section 27 of Narcotic Drugs and Psychotropic Substitutes Act, 1985 in 2001 was referred to, which rationalized sentence structure making it relatable to quantity of drugs seized. The drug users who possess limited quantity of drugs was provided lesser punishment than the drugs traffickers who possess large quantity of drugs.
- Coercive bribe givers are the victim of the crime of bribery. They should not be treated on equal footing with collusive bribe givers as far as punishment to bribe givers is concerned.
- Punishment for both petty as well as grand or hyper corruption is proposed to be same. That should be rationalised and linked to the enormity of bribe paid or received.
- The minimum and maximum punishment for corruption cases might be enhanced to seven and ten years, respectively, to make it stringiest and deterrent.
- It does not seem appropriate to punish the bribe giver if he/she is involved in passive bribery. It may lead to victimization of innocent people by public officials if both bribe giver and taker are made equally liable.
- Bribery being a social evil, the bribe giver whether subjected to active or passive bribery should be liable to punishment. If people are honest in their social interaction, the cases of corruption can be reduced substantially.
- Minimum mandatory punishment of 5 years imprisonment coupled with confiscation of assets of public servant in the offence of corruption. In the case of collusive large-scale corruption causing grave loss to the public exchequer, the minimum punishment should be imprisonment of 15 years.
- Bribe giver should not be put on same footing with the bribe taker. The bribe giver may be criminally liable with fine while the bribe taker as well as the abettor/broker may be criminally liable with rigorous imprisonment.

F. Bribe Giver Turning Approver

- In majority of cases, it is seen that the bribe-giver goes scot free by taking resort to the provisions of Section 24 of the PC Act, 1988 and it becomes increasingly difficult to tackle consensual bribery. The omission of Section 24 was supported in that context.
- Bribe givers usually report to the Anti-Corruption agencies after paying part of bribery. Section 24 of the Prevention Corruption Act may be retained for the sake of effectiveness of trap cases.
- Section 24 of Prevention of Corruption Act, 1988 ought to be retained to expose harassment bribe takers by the common man who pays it for delivery of public service for which he is otherwise entitled to, from the State by reporting to the State after getting the service.
- Protection to whistle blowers by insertion of Section 8(2), if he/she informs the probe agency before giving bribe to Government servant is a good move to check corruption.
- Either the bribe giving under duress may be given lower punishment than the collusive bribe giver or Section 24 of the Prevention of Corruption Act, 1988 providing protection to bribe giver who does not get punishment when turns into the approver to be retained in public interest.
- A bribe giver is often a very important witness in bribery cases and plays a crucial role in the prosecution of the bribe taker. Putting the bribe giver at par with the bribe taker might make it more difficult in the prosecution of bribe taker since both of them try to each other.
- Proposed Section 8(2) provides protection to bribe givers who become informers prior to payment of bribe to public servants. The deletion of Section 24 proposed under the Bill would offset by such new provision.
- Transaction of bribe taking and giving is of private in nature. Since the bribe giver has made criminally liable *ipso facto*, it is difficult to get evidence to prosecute either bribe giver or bribe taker.

G. Confiscation and Forfeiture of Property

- Provisions in the Prevention of Money Laundering Act, 2002 permits confiscation of property during the trial period without the approval of competent authority. Similarly, the Odisha Special Act, 2005 also permits the Officer of the court to confiscate property of corrupt Government Servant during the trial period but the provisions in the Criminal Amendment Law Ordinance, 1944 requires approval of the competent authority to confiscate property of the corrupt public servant. It was suggested that time limit given in the Odisha Special Act, may be considered for inclusion in the proposed Bill.
- The quantum of punishment in disproportionate asset cases should be more for the bribe taker than a normal bribe taker who do not have disproportionate assets. If the known source of income is not reported to the competent authority periodically under the procedure laid down under the Rules the plea taken after being caught in disproportionate cases should not be accepted *prima facie*.
- Some of the State Governments follow zero tolerance to corruption and also provide adequate security to witnesses and whistle blowers for not turning hostile during the trial. The residence of corrupt Government servant have been utilized as school for under privileged children. Posting and transfer of Government servants is a major source of corruption which need to be regulated.
- The proceeds of corruption are held in false name by the public servant and there is propensity to transfer property quickly when the corrupt government servant is

caught. The provisions in Odisha and Bihar Special Court Acts relating to forfeiture and confiscation of property appears to be better where the permission of Special Judge is not required by the prosecuting agency to attach the property which stops the transfer of that property by the public servant. Thus those provisions may be imported under proposed Section 18A of the Prevention of Corruption Act.

- The provisions for attachment of property under the Criminal Ordinance Amendment Law, 1944 and the Prevention of Money Laundering Act, 2003 are out dated whereas the provisions in Odisha and Bihar Special Court are functionally better and may be included in the Bihar.
- Maximum period of attachment of property envisaged under new Section 18 (1) is for one and half years which appears to be inadequate as the investigation taken more than two years to complete investigation formalities. It was, therefore, suggested that attachment period may be extended to three years with two extension of one year each after the expiry of initial period of one year.
- Interim attachment of property may be a handicap for the honest public servant.
- Requirement of prior approval of competent authority for confiscation of proceeds of corruption should be dispensed with.
- There is time limit of three months and six months, respectively, in Odisha Special Courts Act and Bihar Special Courts Act for disposal of appeal to High Court while no such time limit has been prescribed in Prevention of Corruption Amendment Bill, 2013.
- Confiscation of assets of corrupt public servants prematurely may be against principle of natural justice and equity.
- Criminal Law (Amendment) Ordinance, 1944 is more suitable than the provisions of Prevention of Money Laundering Act, 2002 and Odisha/Bihar Special Courts Act.

H. Corporate Corruption

- The Foreign Corrupt Practices Act, 1997 of USA and the UK Bribery Act, 2010 have put additional obligations upon MNCs of those countries operating in India. But some of MNCs paying bribe to public servants have been reported in the media. The code of ethics developed for internal functioning has very little adherence. Thus the companies both private and public, besides adoption of internal code of conduct need to be legally and vicariously liable for the bribes paid by their agents or fixers to public servant Companies need to become intolerant to corruption and strengthen standard of their corporate governance and integrity.
- Commercial organizations should be held legally accountable for corrupt activities by its employees in addition to having internal preventive mechanism to threat corrupt activities.
- Commercial organizations should be made vicariously liable for the offence committed by their employees and agents.
- Bribe giving by the employees of the Company should be treated as a specific misconduct in their respective conduct rules/regulations.

I. Miscellaneous

- There should be mandatory cooling off period for retired Government servants before taking post retirement assignment as some of the Government servants favour the Government during last leg of their carrier in office.

- Many PSUs have developed online system of filing assets by both executive and non-executive in their organization as a preventive measure.
- Corruption even though rampant in our society is not endemic. It arises out of systemic failure not due to erosion of value system in our society. Any corruption including corruption in delivery of public service, or in public procurement or corruption in private sector are interlinked to political and judicial corruption. Thus a mere rewriting of Prevention Corruption Act, 1988 to bring it in line with UNCAC, 2005 may not yield the desired result.
- State Laws enacted to promote e-governance, good governance as supplemented to the PC Act would reduce the chance of corruption.
- Investigative officers of Lokayuktas should be selected from Law graduates.
- There may be harassment and blackmailing of Government employees by the whistle blowers, a mechanism to keep vigil over whistle blowers may be provided in the PC Act.
- Some of the relevant laws that need to be enacted or amended are (a) The Benami Transactions (Prohibition) Amendment Act (new Bill introduced in Parliament), (b) The Public Procurement Act (introduced in Parliament), (c) Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisation Bill (lapsed), (d) Amendments to the Prevention of Money Laundering Act, (e) Companies Act, (f) SEBI guidelines. In addition, legislations such as the Whistle blower protection Act will need to be reworked in the light of the experience gained over the past two years.
- In 2016, India is ranked 76th out of 168 countries in Transparency, International Corruption, Perception Index which requires further improvement.
- The Corrupt Public Servants (Forfeiture of Property) Bill as suggested by 166th Law Commission of India should be enacted without further delay.
- Quick implementation of Benami Transaction (Prohibition) Act, 1988.